VOLUME I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1957

No. 15

PUBLIC SERVICE COMMISSION OF UTAH AND UTAH CITIZENS RATE ASSOCIATION, APPELLANTS,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, THE DENVER AND RIO GRANDE WESTERN RAILWAY COMPANY, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

FILED AUGUST 30, 1956

PROBABLE JURISDICTION NOTED NOVEMBER 5, 1956

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APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

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[fol. A] [Caption omitted]

[fol. 1]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

PUBLIC SERVICE COMMISSION OF UTAH and UTAH CITIZENS RATE ASSOCIATION, Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants.

AMENDED COMPLAINT TO SET ASIDE, ANNUL AND SUSPEND AN ORDER OF THE INTERSTATE COMMERCE COMMISSION—
Filed February 17, 1956

Case No. C-8-56

I

This action is brought pursuant to the provisions of Title 49, U.S.C. Sec. 17 (9) and Title 28 U.S.C. Secs. 1336, 1398, 2284, 2321, 2322, 2323, 2324 and 2325, and pursuant to Title 5 U.S.C. Sec. 1009 to annul and set aside the Report of the Interstate Commerce Commission dated October 17, 1955, and Orders of said Interstate Commerce Commission dated January 9, 1956 and February 8, 1956, entered in a proceeding entitled Utah Intrastate Freight Rates and Charges, I.C.C. Docket No. 31484, all as more fully hereinafter set forth.

II

(a) The plaintiff, Public Service Commission of Utah, is a duly created and established agency and commission of the State of Utah existing under and by virtue of the provisions of Section 54-1-1, U.C.A. 1953 and having the authority under said section to sue and be sued. The Public Service Commission of Utah is vested, among other powers and duties, with the power, authority and duty to regulate, supervise, approve and disapprove the intrastate freight rates and charges of all common carrier railroads operat-

ing within the state of Utah and having the power and authority under the provisions of Sec. 54-4-6, U.C.A. 1953 to petition the Interstate Commerce Commission or any court of competent jurisdiction as to all matters regarding the interstate railroad rates which affect the interest of the [fol. 2] citizens of the state of Utah. The members of the Public Service Commission of Utah are Hal S. Bennett, chairman and Donald Hacking and Stewart M. Hanson, members.

(b) The plaintiff, Utah Citizens Rate Association, is a non-profit corporation, organized and existing under and by virtue of the laws of the state of Utah. The membership of said non-profit corporation consists of approximately 100 individuals, firms, partnerships and corporations within the state of Utah who ship freight extensively over railroads operating in and through the state of Utah.

(c) Defendants are United States of America and the Interstate Commerce Commission. The United States of America is made a defendant herein pursuant to the provisions of Title 28, U.S.C. 2322.

III

Pursuant to various petitions filed with it by the common carrier railroads the Interstate Commerce Commission in a proceeding designated as Ex Parte No. 175 in a number of reports, the third and final of which was decided April 12, 1952 and reported at 284 I.C.C. 589, authorized increases of 15% in the basic freight rates and charges in all territories of the United States subject to certain exceptions and maximum increases, said increases to expire on the 28th day of February, 1954. By subsequent order entered July 29, 1953, the expiration date of said increases was extended to December 31, 1955, and by order dated October 17, 1955 the expiration date of said 15% increase was removed and the railroads were authorized to make such increases a permanent and integral part of their rate structure. The increase thus granted in Ex Parte No. 175 was the fourth major general increase in interstate rates and charges in all states of the United States since the termination of World War II.

IV

By petitions filed in June 1951, November 1952 and September 1953 the common carrier railroads operating in the state of Utah requested the Public Service Commission [fol. 3] of Utah to grant increases on Utah intrastate railroad rates and charges corresponding to those authorized by the Interstate Commerce Commission on interstate railroad rates and charges in Ex Parte No. 175. Hearings were held on these petitions in October 1951 and November and December 1953. By Order of the Public Service Commission of Utah dated December 14, 1953 the Commission dismissed the petitions of the railroads and denied the relief sought on the grounds that the petitioning railroads had failed to present evidence from which the Commission could determine whether or not the intrastate operation of the applicant railroads produced revenue sufficient to provide a fair share of the overall revenue requirements of the applicants.

The dismissal was made without prejudice to the applicants to apply for a further hearing for the presentation of further evidence.

V

The railroad presented no further evidence to the Public Service Commission of Utah but filed a petition in the matter with the Interstate Commerce Commission under the provisions of Section 13, Part 1 of the Interstate Commerce Act. Pursuant to said petition, the Interstate Commerce Commission entered into an investigation for the purpose of determining whether the rates and charges of the common carrier railroads operating in the State of Utah for the interstate movement of freight made or imposed by authority of the State of Utah caused any undue or unlawful advantage, preference or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce and if so what rates and charges should be prescribed to remove any unlawfulness found to exist. All common carrier railroads operating within the State of Utah were made respondents in such proceedings. The plaintiffs in this action appeared in such proceedings as parties protestant. Said investigation was assigned by the Interstate Commerce Commission Docket No. 31484.

[fol. 4]

VI

On the 20th and 21st days of May, 1954 a hearing was held and conducted in I.C.C. Docket No. 31484 in Salt Lake City, Utah before Interstate Commerce Commission Examiner Myron Whitters. At said hearing the parties plaintiff herein and other interested shippers who would be affected by any increase in Utah intrastate freight rates and charges appeared as protestants. At said hearing a great amount of testimony, both oral and documentary was introduced by both the respondent railroads and the protestants, as is more fully shown by the printed transcript of the evidence and exhibits introduced at said hearing which will be presented as evidence to this Court.

VII

On or about the 11th day of March, 1955, the Interstate Commerce Commission served upon the plaintiffs herein and other parties of record a proposed report by Interstate Commerce Commission Examiner Myron Whitter. Said proposed report recommended that the Interstate Commerce Commission should find, among other things, that the then existing Utah intrastate freight rates and charges were abnormally low and that traffic thereunder failed to produce its fair share of the earnings required to yield the respondent railroads required revenue and further that the burden thus cast upon interstate commerce was undue in and to the extent that the intrastate freight rates and charges were less than those recommended in said report, and that, therefore, the then existing Utah intrastate freight rates and charges were causing and would continue to cause undue, unreasonable and unjust discrimination against interstate commerce. In said report the Interstate Commerce Commission Examiner also recommended to the Interstate Commerce Commission that they find that no evidence existed of discrimination against persons and localities in interstate commerce as a result of the level of Utah intrastate freight rates and charges. The proposed report of said Examiner recommended that the Interstate Commerce Commission enter an order carrying into effect its Findings and Conclusions and order that the Utah intrastate freight

[fol. 5] rates and charges with certain exceptions should be subject to the same increases as had previously been prescribed by the Interstate Commerce Commission for interstate freight rates and charges in Ex Parte No. 175.

VIII

That within the time prescribed by the rules and regulations of the Interstate Commerce Commission, the plaintiffs herein filed with the Interstate Commerce Commission their exceptions to the Examiner's proposed report. Oral arguments were heard before the Interstate Commerce Commission on said exceptions on the 11th day of July, 1955. Counsel for the plaintiffs herein appeared at the said oral argument and presented arguments to the Commission.

IX

On October 17, 1955, the Interstate Commerce Commission issued a report in Docket No. 31484. After discussing the matter at length, the said report concluded as follows:

"*Discussion and Conclusions.*—This proceeding presents two main questions for determination. First, do the present intrastate rates and charges cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate commerce, on the other hand; and second, do the present intrastate rates and charges cause any undue, unreasonable, or unjust discrimination against interstate commerce? In considering the first question, it should be noted that this provision of section 13(4) of the act is primarily for the protection of persons and localities and not for the benefit of the carriers. Only one interstate shipper of cement presented evidence purporting to show undue and unreasonable advantage and prejudice between persons and localities. That evidence is not sufficient to support the Statewide finding requested.

"There remains the question of unlawful discrimination against interstate commerce. As noted, the respondents estimate that their annual revenues will be increased by approximately $1,880,000 if the Ex Parte

No. 175 increases are added to the present intrastate rates. About 80 percent of that amount, it is estimated would come from the intrastate movement of products of mines. This would leave some 20 percent, or $376,000, to be borne by other commodities.

"The record is convincing that the transportation conditions affecting Utah intrastate traffic differ in no material respect from those affecting interstate traffic to and from that state, and that Utah intrastate traffic is no less able to bear the full increase sought than the interstate traffic. The Ex Parte No. 175 increases were authorized for interstate rail traffic throughout [fol. 6] the country based upon the total revenue needs of the railroads generally, and have been made effective on interstate traffic generally as well as on intrastate traffic within most of the States. The railroads' need for additional revenue to meet increased operating expenses was the underlying basis for our decision in that proceeding. Those increased operating costs were not confined to interstate traffic, but were and are incurred also on Utah intrastate traffic.

"We conclude that.——

"1. The conditions incident to the intrastate transportation of freight in Utah are not more favorable than those incident to the interstate transportation between Utah and adjoining States.

"2. The amounts and percentages by which interstate freight rates and charges between points in Utah and points in other States were increased, as authorized in Ex Parte No. 175, are just and reasonable.

"3. The present Utah intrastate rates and charges on carload and less-than-carload freight, except on sugar beets and beet-sugar final molasses destined to sugar factories, and excepting certain rates on coal, sheep, and cattle, hereinafter enumerated, imposed by authority of the State, are abnormally low, and traffic thereunder fails to produce its fair share of the earnings required to yield revenue sufficient to enable the respondents, under honest, economic, and efficient management, to provide adequate and efficient railway

transportation service at the lowest cost consistent with the furnishing of such service, and thereby accomplish the purposes of the Interstate Commerce Act, as set forth in the national transportation policy declared by the Congress to develop and preserve a national transportation system adequate to meet the needs of the commerce of the United States, of the postal service, and of the national defense. The burden thus cast upon interstate commerce is undue in and to the extent that these intrastate rates and charges are less than they would be on the bases herein prescribed; and these intrastate rates and charges cause, and for the future will cause, undue, unreasonable, and unjust discrimination against interstate commerce.

"4. The undue, unreasonable, and unjust discrimination herein found to exist should be removed by applying to the Utah intrastate rates and charges, on the commodities and traffic herein described, the same respective increases as are and for the future may be maintained by the respondents on like interstate traffic between points in Utah and adjoining States under our authorization in Ex Parte No. 175, provided that increases may not be made in intrastate rates to levels higher than the interstate rates on like traffic to or from Utah for like or greater short-line distances over the same lines of railroad, except in instances where the interstate rates, and not the intrastate rates, are designated as published to meet motor-carrier competition.

"5. The establishment of increases in intrastate rates and charges as prescribed in finding 4 will not result in unreasonable rates, and will substantially increase the respondents' annual revenues.

"6. The increased revenues to the respondents which will result from the increased rates and charges as provided in finding 4 are required from intrastate traffic in Utah in order to enable the respondents to provide adequate and efficient railway transportation service. [fol. 7] "7. In certain instances it appears that the present Utah intrastate rates are now as high as cor-

responding interstate rates including the Ex Parte No. 175 increases for comparable distances. The intrastate rates specified below, are excepted from the findings herein:

"Rates on sugar beets or beet-sugar final molasses destined to sugar factories.

"Rates on coal, viz.:

"From Castle Gate to Milford, Utah, slack and other sizes.

"From Castle Gate to Lund, Utah, slack and other sizes.

"From Castle Gate to Devil's Slide, Utah, slack.

"Rates on sheep, in double-deck cars, viz.:

"From Lakeside to Wasatch, Utah

"From Cedar City to Kaysville, Utah

"Rates on cattle, in single-deck cars, viz.:

"From Spanish Fork to Ogden, Utah.

"The foregoing findings relate to Utah intrastate rates generally, and are without prejudice to reexamination, upon complaint or otherwise, as to the lawfulness of any individual Utah intrastate rate on any particular commodity.

"An order will be entered carrying into effect the foregoing findings, unless this Commission is notified by the Utah Commission, within 30 days from the date of service of this report, that it will permit the increase required to remove the unlawfulness herein found to exist."

Interstate Commerce Commissioner Freas dissented in part from said report. Said report was filed and served upon the plaintiffs hereto on the 18th day of November, 1955.

X.

On the 5th day of December, 1955 the plaintiffs herein filed with the Interstate Commerce Commission its Petition for Reconsideration and Rehearing in Docket No. 31484.

on the ground that the Report and Order of the Commission were contrary to the law and the evidence in the following particulars:

"1. The findings of the Commission to the effect that the amounts and percentages by which interstate freight rates and charges between points in Utah and points in other States were increased, as authorized by Ex Parte No. 175, are just and reasonable, is contrary to the evidence and to the law in that said interstate rates as fixed in Ex Parte No. 175 were not just and reasonable, but were unjust and contrary to the law in that said Ex Parte No. 175 granted flat, hori- [fol. 8] zontal percentage increases on all freight rates with certain restricted exceptions without regard to whether or not certain rates were too low or too high before said increase, without regard to whether or not certain rates were contributing more or less than their share to the railroad earnings, and without regard to whether the increases granted created discrimination and hardship as prohibited by the Interstate Commerce Act.

"2. That the Commission's Conclusions and Findings Nos. 1, 3, 4, 5 and 6 are unsupported by any substantial evidence introduced either before this Commission or before the Public Service Commission and are contrary to the weight of the evidence in the case in that the petitioning railroads have presented no evidence of any kind upon which the Commission could base the Findings above listed."

XI

On the 16th day of December, 1955, the Commission made and entered its Order extending from December 18, 1955 to January 20, 1956 the date on which the Public Service Commission of Utah is required to notify the Interstate Commerce Commission that the Public Service Commission of Utah is permitting the increased rates to go into effect.

XII

On the 9th day of January, 1956 the Interstate Commerce Commission denied said Petition for Reconsideration and Rehearing.

XIII

On the 8th day of February, 1956, the Interstate Commerce Commission made and entered its Order which, after incorporating by references its Report of October 17, 1955 hereinabove referred to, and after referring generally to the prior proceedings and to the denial of plaintiffs' Petition for Reconsideration and Rehearing, concluded as follows:

> "*It is ordered,* That the respondents in this proceeding, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on March 13, 1956, and thereafter to abstain from practicing the unjust discrimination against interstate commerce found in said report to exist; and to establish on March 13, 1956, upon not less than one day's notice to this Commission and to the general public by filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and thereafter maintain and apply for the intrastate transportation of commodities generally, except on sugar beets, beet-sugar final molasses, and certain rates on coal, sheep, and cattle, as set out in said report, from and to points in the State of Utah, freight rates and charges which shall be no lower than the approved rates and charges thereon, as provided in said report."

[fol. 9]

XIV

That said Order of the Interstate Commerce Commission of January 9, 1956 denying plaintiffs' Petition for Reconsideration and R ' earing and the Order of said Commission of February 8, 1956 constitute the final action of the Interstate Commerce Commission, and the plaintiffs have thus exhausted their administrative remedies before said Commission.

XV

The Report of the Interstate Commerce Commission dated October 17, 1955 and its final Orders dated January 9, 1956 and February 8, 1956, are unlawful and void for the following reasons, all of which are apparent in the Report and in the records considered as a whole:

(a) The finding of the Interstate Commerce Commission to the effect that the amounts and percentages by which interstate freight rates and charges between points in Utah and points in other states were increased as authorized by Ex Parte No. 175 are just and reasonable is contrary to the evidence and to the law in that said interstate rates as fixed by Ex Parte No. 175 were not just and reasonable but were unjust and contrary to the law, in that said Ex Parte No. 175 granted flat horizontal percentage increase on all freight rates with certain restrictive exceptions, without regard as to whether or not certain rates were too high or too low before said increases, without regard as to whether or not certain rates were contributing more or less than their share of the railroad earnings, and without regard as to whether the increases granted created discrimination and hardship as between individuals, territories and locations, all in contravention of the provisions of 49 U.S.C., Sec. 1(5) and the provisions of Title 49 U.S.C., Sec. 3(1), and that any order of the Interstate Commerce Commission designed to bring intrastate rates into conformity with interstate rates, which interstate rates are themselves unlawful, is beyond the power and authority of the Interstate Commerce Commission and contrary to law.

(b) The findings of the Interstate Commerce Commission and its action in authorizing and ordering an increase in the intrastate rates in question was not supported by [fol. 10] substantial evidence that such rates cause undue, unreasonable and unjust discrimination against interstate commerce and was therefore unauthorized by and contrary to the provisions of the Interstate Commerce Act and the Administrative Procedures Act and was an unauthorized and unwarranted invasion of the reserved authority of the state over such intrastate rates, in violation of the Constitution of the United States.

(c) The action of the Commission in authorizing and ordering an increase in the intrastate rates in question was wholly based upon a presumption that a disparity between interstate rates on the one hand and intrastate rates on the other hand is adequate evidence of undue discrimination against intrastate commerce, which presumption is contrary to the law.

(d) The action of the Interstate Commerce Commission in authorizing and ordering an increase in the intrastate rates in question was erroneously based upon a misapplication of the provisions of the Interstate Commerce Act and the Administrative Procedures Act pertaining to the burden of proof under which the proponents of the increased rates should prove that the rates in question unreasonably discriminated against interstate commerce, whereas it is apparent from the record in this proceeding that the burden of disproving such discrimination was cast upon the plaintiffs herein and the protestants in the proceeding before the Interstate Commerce Commission.

(e) The action of the Interstate Commerce Commission in authorizing and ordering an increase in the intrastate rates in question was based upon a failure to require proof of the essential elements of Federal jurisdiction over intrastate rates with the degree of certainty required for the assertion of jurisdiction over intrastate rates in the following particulars:

1. There was no substantial evidence that the railroads were not earning a fair and reasonable return from their intrastate operations in Utah with respect to the rates on which an increase is sought.

2. There was no substantial evidence that the revenues [fol. 11] derived from such operations without the increases would not bear their fair share of the revenue required to enable the railroads to render adequate and efficient transportation service.

3. There was no substantial evidence that the operating conditions in Utah in intrastate service are similar to those in the West or in the nation as a whole.

(f) The finding of the Commission that conditions incident to the transportation of freight in Utah are not more favorable than those incident to the interstate transportation between Utah and the adjoining states is not supported by evidence of record and is contrary to the weight of the evidence which conclusively shows that:

1. The density of traffic on the lines of the respondent railroads within the State of Utah, which density of traffic is materially contributed to by Utah intrastate traffic is much greater than the density of traffic in surrounding states and on the lines of the respondent railroads as a whole.

2. Many Utah intrastate rates, without the imposition of the 15% increase, are higher than comparative interstate rates and intrastate rates in surrounding states for the same commodity over the same length of haul. While the average revenue per ton mile from Utah intrastate traffic is slightly lower than the system averages for the respondent railroads, the percentage of Utah traffic, made up of lower revenue, lower cost of operation products of the mine, is much higher than on the system of the respondent railroads as a whole.

3. The freight operating ratios of the respondent railroads on Utah intrastate traffic is materially lower than the system-wide freight operating ratios of the respondent railroads, the term "operating ratio" applying to the percentage relationship which costs of operation bear to revenue.

4. The rate of return of the respondent railroad, Bamberger Railroad Company, whose operations are entirely [fol. 12] within the State of Utah, was 15.98% in the year 1953. The rate of return of Denver and Rio Grande Railroad, approximately 50% of whose operations are in the State of Utah, was 6.06%. The rate of return of Union Pacific Railroad, a smaller portion of whose operations are in the State of Utah, was 3.5%, while the rate of return of the Southern Pacific Railroad, only a small percent of whose operations are in the State of Utah, was 3.48%.

(g) The respondent railroads introduced no evidence showing revenue, costs, investment or rate of return or

operating ratio on Utah intrastate freight traffic. The respondent railroads introduced no other evidence upon which it can be determined whether or not Utah intrastate rates, as existing without the 15% increase, contribute more or less than their fair share of the operating expenses of the respondent railroads.

XVI

Plaintiffs further show that in the event the increased rates in question are permitted to become effective and the operation and enforcement of the final Orders are not restrained and enjoined:

(a) The plaintiff, Public Service Commission of Utah, will be divested of its statutory jurisdiction to make reasonable rates on the intrastate transportation of freight within the State of Utah and will be precluded from exercising its statutory and constitutional rights and duty to make such rates, and thereby the plaintiffs and the people and citizens of the State of Utah will suffer immediate and irreparable injury and loss.

(b) The shippers of commodities in the State of Utah will be immediately forced to pay the increased rates in the amount of approximately $1,800,000.00 annually, all of which would involve a substantial and immediate expense to said shippers and to the economy of the State of Utah.

XVII

Plaintiffs further show that a Temporary Restraining Order should be issued pending hearing on a temporary injunction and that upon said hearing, a temporary injunc- [fol. 13] tion should be issued pending the final determination of this case for the following reasons:

(a) If the increases are allowed to go into effect and then are held to be unlawful at the time of final determination in this case, great uncertainty and confusion will result as a result of the higher rate scale in effect during the period that this case is in hearing and under consideration.

(b) No remedy or right of action to recover the differential between the present rates and increased rates is

available to the plaintiffs or to shippers or people and citizens of the State of Utah, should the increases become effective for a period of time and should the Court finally adjudge the increased rates invalid, and therefore there is no adequate means of preventing irreparable injury and loss other than the granting of the Temporary Restraining order and Temporary Injunction as requested by this complaint.

Wherefore, the plaintiffs pray:

(a) That a Court consisting of three judges constituted as required by Title 28, U.S.C., Sec. 2284, be convened and that process and notice be given to the defendants as required by law;

(b) That upon final hearing, the Court adjudicate, order and decree that the Report of the Interstate Commerce Commission dated October 17, 1955, in Docket No. 31484, and its Orders dated the 9th day of January, 1956, and the 8th day of February, 1956, in the same matter, and each of them are unlawful, null and void and that they be set aside and that the enforcement thereof be enjoined, annulled, and set aside, and that the Interstate Commerce Commission be directed to enter an order dismissing the proceedings referred to herein;

(c) That pending the final hearing, a temporary or interlocutory injunction be granted and issued enjoining and suspending the operation of said Report and Orders in their entirety until the final hearing and determination of this action;

(d) That a Temporary Restraining Order be issued restraining and suspending the operation of said Orders until [fol. 14] the hearing and determination of the application for a temporary injunction;

(e) That plaintiffs be given such other and further relief as may be equitable and proper in the premises.

E. R. Callister, Attorney General for the State of Utah, By Raymond W. Gee, Deputy Attorney General, Attorneys for the Plaintiff, Public Service Commission of Utah.

Calvin L. Rampton, 721 Continental Bank Building, Salt Lake City, Utah, Attorney for the Plaintiff, Utah Citizens Rate Association.

[fol. 15] *Duly sworn to by Hal S. Bennett and Morris Rosenblatt (Jurat omitted in printing).*

[fol. 16] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

[Title omitted]

MOTION OF UNION PACIFIC RAILROAD COMPANY, ET AL. TO INTERVENE AS DEFENDANTS UNDER RULE 24 AND NOTICE THEREOF—Filed February 28, 1956

I.

Union Pacific Railroad Company, The Denver & Rio Grande Western Railroad Company, Southern Pacific Company, The Western Pacific Railroad Company, Bamberger Railroad Company, The Ogden Union Railway & Depot Company, Salt Lake Garfield & Western Railway Company, Tooele Valley Railway Company and Utah Railway Company file this Motion pursuant to Rule 24 (a) and (c), (28 U.S.C.A., Federal Rules of Civil Procedure, Rules 17-51) to intervene as defendants in the above-entitled proceeding, in which Complaint was filed on January 16, 1956, and Amended Complaint on February 17, 1956.

II.

Movants are corporation common carriers by railroad, and each of them is engaged in the transportation of property, and the four first named are each engaged in the transportation of passengers, in interstate and intrastate

commerce over their respective lines of railroad in and between several states in the midwestern and western part of the United States. Each of said railroads operates and conducts business in the District of Utah. In the order named in Paragraph No. I, said railroad companies were incorporated respectively in the states of Utah, Delaware, Delaware, California, Utah, Utah, Utah, Utah and Utah.

[fol. 17]

III.

As shown by the allegations therein, the Amended Complaint of the Public Service Commission of Utah and Utah Citizens Rate Association, hereinafter called "PSCU" and "Rate Association," or "Plaintiffs," seeks to enjoin, annul and set aside the two orders issued by the Interstate Commerce Commission in a proceeding entitled "No. 31484 Utah Intrastate Freight Rates and Charges," one order being dated January 9, 1956 and one February 8, 1956, and to dismiss the proceedings in which said order was entered. Movants were respondents in that proceeding before the Interstate Commerce Commission and therefore are entitled to intervene in this suit as of right, pursuant to the provisions of 28 U.C.A., Section 2323.

IV.

Further demonstrating their interests in this suit, movants show that the rates prescribed and provided by the decision of the Interstate Commerce Commission, if made effective pursuant to said order of February 8, 1956, would increase movants' intrastate revenue in the State of Utah approximately $1,880,000 per year.

V.

Movants are now informed that, pursuant to said amended complaint as so filed, plaintiffs have applied to the above-entitled court for the issuance of a temporary restraining order, restraining the enforcement of said Interstate Commerce Commission's orders until after hearing of the issues raised by said amended complaint by the three-judge court requested to be constituted as set forth therein. Movants

further state that such temporary restraining order, if issued and allowed to become effective against said orders of said Interstate Commerce Commission, would cause unnecessary and irreparable damage to these movants and that such temporary restraining order is unnecessary.

WHEREFORE, these movants pray for an order of this court permitting them to intervene as defendants in this suit, allowing them to file an answer to the Amended Complaint as tendered herewith, allowing them to be heard upon and in opposition to plaintiffs' motion for a temporary restrain-
[fol. 18] ing order and in connection therewith and upon all matters submitted in said case, to submit oral arguments or briefs, and to be treated in all respects as defendants in this suit.

Respectfully submitted,

Bryan P. Leverich, Elmer B. Collins, W. H. Fitzpatrick, Ernest P. Porter, Albert R. Bowen, Peter W. Billings, Wood R. Worsley, S. N. Cornwall, A. U. Miner, 10 South Main Street, Salt Lake City, Utah, By A. U. Miner, Attorneys for Movant Railroads.

Received copy of foregoing Motion to Intervene as Defendants this 28th, day of February 1956.

Calvin L. Rampton, Attorney for Plaintiffs.

A. Pratt Kesler, United States Attorney, Attorney for Defendants.

[fol. 19] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

[Title omitted]

NOTICE OF MOTION—February 28, 1956

To: The Public Service Commission of Utah, Utah Citizens Rate Association, United States of America, Interstate Commerce Commission.

Please take notice that the above motion will come on for hearing before the United States District Court for the District of Utah at the Federal Building, Salt Lake City, Utah, upon such date as the court may set for such hearing.

Bryan P. Leverich, Elmer B. Collins, W. H. Fitzpatrick, Ernest P. Porter, Albert R. Bowen, Peter W. Billings, Wood R. Worsley, S. N. Cornwall, A. U. Miner, 10 South Main Street, Salt Lake City, Utah, By A. U. Miner, Attorneys for Movant Railroads.

February 28, 1956.

Received copy of foregoing Notice of Motion this 28th day of February 1956.

Calvin L. Rampton, Attorney for Plaintiffs.

A. Pratt Kesler, United States Attorney, Attorney for Defendants.

[fol. 20] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

[Title omitted]

ANSWER OF INTERVENING DEFENDANTS, UNION PACIFIC RAILROAD COMPANY, THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, SOUTHERN PACIFIC COMPANY, THE WESTERN PACIFIC RAILROAD COMPANY, BAMBERGER RAILROAD COMPANY, THE OGDEN UNION RAILWAY AND DEPOT COMPANY, SALT LAKE-GARFIELD AND WESTERN RAILROAD COMPANY, TOOELE VALLEY RAILWAY COMPANY, AND UTAH RAILWAY COMPANY, TO AMENDED COMPLAINT—Filed February 28, 1956

The above named intervening defendants, for answer to the amended complaint filed herein, say:

I.

These interveners admit the allegations of paragraphs I and II of the amended complaint, except that they deny that part of the allegations in paragraph II(a) to the effect that the Public Service Commission of Utah has power or authority over intrastate rates and charges of common carrier railroads in Utah superior or to the exclusion of the power of the Interstate Commerce Commission over such intrastate rates under Section 13 of the Interstate Commerce Act, pursuant to which the order assailed by the complaint was made and issued by the Interstate Commerce Commission.

II.

These interveners admit the allegations of paragraphs III to XII, inclusive, of the amended complaint.

III.

These interveners admit that the Commission issued its [fol. 21] order dated February 8, 1956, as alleged in paragraph XIII of the amended complaint, directing these interveners to increase their intrastate freight rates and charges as indicated in said order.

IV.

These interveners deny that the Commission's order of January 9, 1956, constituted final action on the part of the Interstate Commerce Commission, but the interveners admit that the order of said Commission of February 8, 1956, did constitute a final order and that the plaintiffs have exhausted their administrative remedies before said Commission.

V.

These interveners deny the allegations made in paragraphs XV to XVII, inclusive, of the amended complaint, and these interveners further deny that the Interstate Commerce Commission's order of February 8, 1956, is unlaw-

ful, void or invalid for the reasons alleged in said paragraphs of the amended complaint, or for any other reasons.

Wherefore, having fully answered the allegations of said amended complaint, these interveners pray that the relief sought should be denied and that the complaint and the amended complaint be dismissed, with costs to the defendants and interveners.

Dated this 28th day of February 1956.

Bryan P. Leverich, Elmer B. Collins, W. H. Fitzpatrick, Ernest P. Porter, Albert R. Bowen, Peter W. Billings, Wood R. Worsley, S. N. Cornwall, A. U. Miner, Attorneys for Intervening Railroads, By A. U. Miner, 10 South Main Street, Salt Lake City, Utah.

Received copy of the foregoing answer of intervening defendants, this 28th day of February 1956.

Calvin L. Rampton, Attorney for Plaintiffs.

A. Pratt Kesler, United States Attorney, Attorney for Defendants.

[fol. 22] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

[Title omitted]

PROPOSAL AND OFFER BY INTERVENING RAILROADS—Filed March 9, 1956

Whereas, the plaintiffs herein have filed their complaint in the above-entitled cause, seeking to temporarily restrain, temporarily and permanently enjoin, set aside and annul that certain final order of the Interstate Commerce Commission dated February 8, 1956, as based upon and including the report and order of the Interstate Commerce Commission as issued under date of October 17, 1955, in its

Docket No. 31484, affecting the intrastate freight rates and charges in the State of Utah, and

Whereas, said plaintiffs included as a part of said complaint a request for and are now requesting the court to issue a temporary restraining order pending hearing and disposition of this cause by a statutory three-judge district court, and whereas the undersigned railroads operating within the State of Utah and who were respondents before the Interstate Commerce Commission in its Docket No. 31484, have intervened in said cause as defendants herein, and

Whereas, the amount involved and which would be received by the railroads if said orders of the Interstate Commerce Commission were allowed to go into effect is approximately the sum of $1,880,000 per annum, and if said orders are restrained and are later approved and not set aside or annulled, said amount or proportionate annual parts thereof would be lost to the railroads with no possible means of recouping or recovering the same, and

[fol. 23] Whereas, said amount, if said orders of the Interstate Commerce Commission are allowed to go into effect, would be paid by Utah shippers, and in the event said orders of the Interstate Commerce Commission were later annulled and set aside, would be lost to said shippers unless some means of repayment or refund can be provided to such shippers,

Now, therefore, he undersigned railroads propose and agree as follows:

1. The undersigned railroads, intervening defendants herein, do hereby propose, offer and agree that if said order of the Interstate Commerce Commission of February 8, 1956, increasing intrastate freight rates within the State of Utah, as based upon said Commission's order of October 17, 1955, be not restrained or enjoined but be allowed to go into effect according to its terms, pending hearing and final determination of all matters involved herein, said railroads will keep strict accounting of all amounts paid by shippers and received by the railroads on account of the

increased rates provided thereby and in the event the final judgment of the three-judge district court or of the United States Supreme Court, in the event of appeal, should be such as to vacate the said orders of the Interstate Commerce Commission insofar as they affect intrastate freight rates within the State of Utah, or any of them, said railroads will refund to the shippers without legal process all excess charges collected by reason of the increased rates, provided that claim is presented and proof as to payment of charges is filed by the shippers within one year from the date of said final judgment and provided further that said railroads will post within thirty days from the date hereof at some conspicuous place at each of the agency stations within the State of Utah a notice of this agreement and maintain said notice for a period of one year from the date of said final judgment.

2. The undersigned railroads further propose, offer and agree as an alternative to the proposal first above made, that in the event the increased intrastate freight rates [fol. 24] authorized and directed by said orders of the Interstate Commerce Commission are allowed to go into effect without restraint or injunction, that they will keep separate the increased amount of monies received thereby and will tender to and deposit with the clerk of the above-entitled court or such other person or agency as the court may direct, the amount received as represented by such increases, to be impounded and held subject to the order of this court pending final determination of all matters involved herein and to be repaid to shippers in the event the final judgment of the three-judge district court or the United States Supreme Court, in the event of appeal, should be such as to annul and vacate the said orders of the Interstate Commerce Commission, otherwise to be turned back to said railroads in the event said orders of the Interstate Commerce Commission are finally affirmed and approved.

With respect to each or either proposal hereby made the railroads agree that the above-entitled court may retain jurisdiction hereof for the purpose of making any necessary orders with respect to refunds to shippers or to direct that

monies be turned back to the railroads if impounded hereunder.

Dated at Salt Lake City, Utah, this 8th day of March 1956.

Union Pacific Railroad Company, By /s/ Bryan P. Leverich.

The Denver and Rio Grande Western Railroad Company, By /s/ S. M. Cornwall.

Southern Pacific Company, By /s/ A. H. Nebeker.

The Western Pacific Railroad Company, By /s/ Peter W. Billings.

Bamberger Railroad Company, By /s/ John H. Snow.

The Ogden Union Railway and Depot Company, By /s/ Bryan P. Leverich.

Salt Lake-Garfield and Western Railroad Company, By (Can't read signature).

Tooele Valley Railway Company, By /s/ S. M. Cornwall.

Utah Railway Company, By /s/ J. E. Morgan.

[fol. 25] IN THE UNITED STATES DISTRICT COURT

March 9th, 1956 — Judge John C. Pickett
C 8-56 — Judge Willis W. Ritter
Judge A. Sherman Christenson

MINUTE ENTRY OF MARCH 9, 1956

PUBLIC SERVICE COMMISSION OF UTAH AND UTAH CITIZENS RATE ASSOCIATION,

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION.

This matter came on for hearing on March 9, 1956, before Honorable Willis W. Ritter, Chief United States District

Judge, and Honorable A. Sherman Christenson, United States District Judge.

Public Service Commission of Utah was represented by Raymond W. Gee, Esq., Assistant Attorney General, State of Utah; Utah Citizens Rate Association was represented by Calvin L. Rampton, Esq.; United States of America was represented by A. Pratt Kesler, Esq., United States Attorney; Interstate Commerce Commission, by George W. Howard, Esq.; Union Pacific Railroad Company by Bryan P. Leverich, Esq. and A. U. Miner, Esq.; Southern Pacific Company by A. H. Nebeker, Esq.; The Western Pacific Railroad Company by Peter W. Billings, Esq.; Bamberger Railroad Company by John H. Snow, Esq.; and The Denver and Rio Grande Western Railroad Company by S. N. Cornwall, Esq.

The railroads having filed a Petition to intervene, the motion to intervene was granted.

Arguments were made by Mr. Rampton and Mr. Miner, after which the following named witnesses were sworn and testified on behalf of plaintiffs: Donald Hacking, member of the Public Service Commission; William J. O'Connor of the Independent Coal & Coke Company; Clark L. Wilson, John R. Gardner and Morris Rosenblatt. Plaintiffs then rested, after which both sides rested.

Mr. Howard stated that answers would be filed on or before March 17th, 1956, and Mr. Rampton was given 5 days thereafter to file any responsive pleading if deemed advisable.

The Temporary Restraining Order was granted. Mr. Rampton will prepare and submit the order.

The parties stipulated that the prayer for a temporary injunction may be heard at the time the case is heard on its merits. Both sides, as well as the Court, stated the necessity for an early hearing on the merits, and the case will be heard as soon as is convenient to Court and counsel.

In the afternoon of March 9th, 1956, the parties advised Judge Ritter that Monday, April 9th, 1956, at 10:00 a.m. would be an agreeable date on which to try the case on its merits and also the injunction pendente lite.

[fol. 26] The parties are to file a written stipulation to that effect, also stipulating that the Temporary Restraining

Order issued today shall continue in force until April 9, 1956.

cc—

E. R. Callister, Attorney General, Raymond W. Gee, Deputy Attorney General, State of Utah, State Capitol Building, Salt Lake City, Utah.

Calvin L. Rampton, Esq., Attorney at Law, 721 Continental Bank Bldg., Salt Lake City, Utah.

A. Pratt Kesler, Esq., U. S. Attorney, 200 Federal Bldg., Salt Lake City, Utah.

George W. Howard, Esq., Attorney at Law, 452 Federal Bldg., Salt Lake City, Utah.

Bryan P. Leverich, Esq., A. U. Miner, Esq., Attorneys at Law, Union Pacific Bldg., Salt Lake City, Utah.

S. N. Cornwall, Esq., Attorney at Law, Walker Bank Bldg., Salt Lake City, Utah.

A. H. Nebeker, Esq., Atty. at Law, Kearns Bldg., Salt Lake City, Utah.

Peter W. Billings, Esq., Atty. at Law, Cont'l Bank Bldg., Salt Lake City, Utah.

John H. Snow, Esq., Atty. at Law, Walker Bank Bldg., Salt Lake City, Utah.

Mr. A. S. Frederickson, General Manager, Salt Lake-Garfield and Western Railroad Company, 22 East First South, Salt Lake City, Utah.

Mr. J. E. Morgan, Utah Railway Company, Newhouse Bldg., Salt Lake City, Utah.

OKC/rb

/s/ WWR

[fol. 27] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

[Title omitted]

ORDER ALLOWING INTERVENTION—March 9, 1956

This cause coming on to be heard on the motion of the railroad companies listed in the motion to intervene as parties defendant, and the court having considered said motion and the matters set forth therein and being duly advised in the premises, and it appearing to the court that the said applicant railroads should be permitted to intervene as prayed,

It is ordered, that the railroad companies named in said motion to intervene are granted leave to intervene and are hereby made parties defendant to this cause with the right to file pleadings and be otherwise represented herein by counsel in the same manner and with like effect as if named as original parties to this action.

It is further ordered, that:

(1) The name of Bryan P. Leverich, whose address is 404 Union Pacific Building, Salt Lake City, Utah, be entered as applicants' attorney of record in this action.

(2) Copies of all answers, pleadings, motions, notices, orders and other documents in said action be served on applicants' attorney of record;

(3) Applicants' proposed answer to the amended complaint herein, the original copy of which was tendered with said motion to intervene, be accepted and filed of record, and

[fol. 28] (4) Applicants, on their own behalf and, as provided in Rule 23 of the Federal Rules of Civil Procedure, on behalf of such other persons or corporations as may have an interest, be given an opportunity to be heard on any application to this court for any decree, injunction, order, determination and finding with respect to the re-

ports and orders of the Interstate Commerce Commission as entered or issued in Interstate Commerce Commission Case Docket No. 31484, Utah Intrastate Freight Rates and Charges, which are the subject of the action filed herein and with respect to any tariffs published and filed or proposed to be published and filed in conformity with and as may in any way be affected by said orders of the Interstate Commerce Commission.

/s/ Willis W. Ritter
/s/ A. Sherman Christenson

Dated March 9, 1956.

[fol. 29] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

PUBLIC SERVICE COMMISSION OF UTAH AND UTAH CITIZENS RATE ASSOCIATION, Plaintiffs,

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, Defendants,

and

UNION PACIFIC RAILROAD COMPANY, THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, SOUTHERN PACIFIC COMPANY, THE WESTERN PACIFIC RAILROAD COMPANY, BAMBERGER RAILROAD COMPANY, THE OGDEN UNION RAILWAY AND DEPOT COMPANY, SALT LAKE-GARFIELD AND WESTERN RAILROAD COMPANY, TOOELE VALLEY RAILWAY COMPANY, and UTAH RAILWAY COMPANY, Intervenors.

TEMPORARY RESTRAINING ORDER—March 10, 1956

Case No. C-8-56

The motion of the plaintiffs for a Temporary Restraining Order in the above entitled matter having come on regularly for hearing at the hour of 10:00 A.M., on the 9th day of March, 1956, pursuant to the provisions of 28 United

States Code, 2284 (3), before Chief Judge Willis W. Ritter, and Judge A. Sherman Christenson of the United States District Court for the District of Utah, the plaintiffs having been represented by their counsel, Raymond W. Gee, Assistant Attorney General of the State of Utah, and Calvin L. Rampton, the defendants having been represented by their counsel, A. Pratt Kesler, United States Attorney for the District of Utah, and George Howard, counsel for the Interstate Commerce Commission, and the Intervenors having been represented by their counsel, A. U. Miner, the Court having heard the evidence presented by the parties and the arguments of counsel, and being fully advised in the matter hereby finds:

1. That the Interstate Commerce Commission under I.C.C. Docket No. 31484 entered into an investigation of Utah intrastate freight rates and charges, and that pursuant to said investigation the Interstate Commerce Commis-
[fol. 30] sion issued a Report dated October 17, 1955 and a Final Order dated February 8, 1956, authorizing and directing the railroads operating within and through the State of Utah, effective March 13, 1956, to increase their Utah intrastate freight rates and charges by an approximate 15% to correspond with increases theretofore granted the railroads on interstate freight rates and charges in a proceeding designated Interstate Commerce Commission Docket Ex Parte 175.

2. That the plaintiffs herein have petitioned this Court, pursuant to the provisions of Title 49, U.S.C. Sec. 17 (9) and Title 28, U.S.C. Secs. 1336, 1398, 2284, 2321, 2322, 2323, 2324 and 2325, and pursuant to Title 5, U.S.C. Sec. 1009, to annul and suspend said Order of the Interstate Commerce Commission, and have further applied to this Court for an interlocutory injunction until said case is decided on its merits, and for a Temporary Restraining Order to prevent irreparable damage until such time as the matter shall be heard by a three judge Court as provided by law.

3. That a substantial controversy exists as to the merits in this action and that the Complaint of the plaintiffs herein on file on its face states a cause of action.

4. That unless a Temporary Restraining Order is issued restraining the Interstate Commerce Commission from making said Order of February 8, 1956 effective pending the hearing of this matter on the application for an interlocutory injunction, irreparable damage will result to the plaintiffs and to other persons shipping by railroad intrastate within the State of Utah in the following particulars:

(a) If said Order of the Interstate Commerce Commission becomes effective the Public Service Commission of Utah will be divested of its statutory authority to approve day to day changes in Utah intrastate freight rates and charges on individual rates, that it appears from the evidence of the witness Donald Hacking, a member of the Public Service Commission of the State of Utah, that almost daily applications for [fol. 31] individual intrastate freight rate changes and adjustments are made by shippers or railroads within the State of Utah;

(b) That it appears from the evidence of the witness, William O'Connor, that if said Order becomes effective, that the coal producers within the State of Utah will be unable to absorb the ordered increase in freight rates and charges and will have to pass the same on to their customers in the form of higher prices for coal; that higher prices for coal will result in a conversion by a substantial number of consumers of coal to gas or oil fuels, that such customers will be permanently lost to the producers and shippers of coal intrastate within the State of Utah, and could not be regained as customers by said shippers of coal if these rates on final hearing were declared to be unlawful, and the rates and thus the price of coal lowered once again to the present level;

(c) That it appears from the testimony of the witness, Clark Wilson, that an increase in the intrastate freight rates on nonferrous metal ores will make it economically impossible for the producers thereof to produce and market certain marginal ores now being produced and marketed by said companies; that if the freight rates on said ores are increased, the marginal ores which become economically unmarketable will be

left in the mines, and under present economic conditions cannot be mined and recovered in the future even should the increases herein be found to be illegal;

(d) That it appears from the evidence of the witness, John R. Gardner, that the producers of products of the mines other than metal ores and coal, will be unable to absorb any increase in the freight rates, and if such freight rates are raised it will be necessary for the producers of such ores to raise the delivered price of their ores with resultant loss of business to producers of competitive products who ship on interstate rates, and that it would be difficult for said producers to regain said customers, even if the rates herein restrained were found to be illegal on final hearing;

[fol. 32] (e) That it appears from the evidence of the witness, Morris Rosenblatt, that an increase in intrastate freight rates would cause the producers of manufactured products in the State of Utah, who ship the same on railroads within the state on intrastate rates to change their quoted delivered prices to their customers on a substantial volume of their products, and if the rates herein at issue were later to be found illegal, it would again require a change, all to the inconvenience and detriment of shippers and consumers generally within the State of Utah.

That because of the foregoing facts, shippers of products by railroads on intrastate rates within the State of Utah, would, if the increases were allowed to go into effect and later declared to be illegal, suffer irreparable damage, much greater than is measurable by the dollar and cents difference between the existing freight rates and the rates provided for in the Interstate Commerce Commission Order dated February 8, 1956.

4. That the railroads have proposed to impound the difference between the presently existing rates and the rates as provided in the Interstate Commerce Commission Order, and to refund the same to the persons paying said rates, if upon final hearing, the application of said rates should be permanently enjoined and restrained, but the Court finds that said proposal would not prevent irreparable in-

jury to the plaintiffs and to shippers within the State of Utah for the reasons above set forth, and the Court further finds that said proposal is impracticable because of the fact that many freight charges are passed on by the one that actually pays the freight bill and such refunds would not find their way back to the persons actually bearing the burden of the increased freight rate.

On the basis of the foregoing findings, It Is Hereby Ordered that the Interstate Commerce Commission and the Intervenors herein be and they are hereby temporarily restrained from making effective the Interstate Commerce Commission Order dated February 8, 1956, in I.C.C. Docket No. 31484, and from increasing Utah intrastate freight rates [fol. 33] and charges as provided in said Order;

It Is Further Ordered that this restraining order shall continue in force and effect only until a determination on the plaintiffs' application for an interlocutory injunction by the full Court provided for in this case by Order of the Chief Judge of the United States Court of Appeals, Tenth Circuit, or until otherwise ordered.

Signed, this 10 day of March, 1956.

Willis W. Ritter, Chief Judge.

A. Sherman Christenson, United States District Judge.

[fol. 34] [File endorsement omitted]

JUDGE RITTER

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION.

[Title omitted]

ANSWER OF THE UNITED STATES OF AMERICA AND OF THE INTERSTATE COMMERCE COMMISSION TO AMENDED COMPLAINT —Filed March 16, 1956

Come now the United States of America and the Interstate Commerce Commission, defendants herein, and for their answer to the complaint say:

1.

Admit the allegations contained in paragraphs I through XIV of the amended complaint.

2.

Deny each and every allegation contained in paragraph XV of the amended complaint.

3.

The allegations contained in paragraph XVI of the amended complaint are merely a complaint against the law as it is written and require no answer. To the extent that answer may be required, these defendants deny that any injury will result from the lawful order of the defendant Interstate Commerce Commission.

4.

Deny each and every allegation contained in paragraph XVII of the amended complaint.

[fol. 35]

5.

Deny that this Court has any power to order the defendant Commission to dismiss the proceeding before it as requested in prayer (b) of the amended complaint.

6.

Further answering the amended complaint these defendants allege that in the proceeding in Docket No. 31484, *Utah Intrastate Freight Rates and Charges,* 297 I.C.C. 87, involved in this action, the parties thereto, including the plaintiffs herein, were, and that each of them was, accorded the full hearing provided for by the Interstate Commerce Act; that in said hearings a large volume of testimony and other evidence bearing upon the matters covered in its report of October 17, 1955, were submitted to the defendant Commission for consideration, including testimony and other evidence submitted on behalf of plaintiffs herein by their counsel; that at said hearings and subsequently, in briefs filed in said proceedings, questions relating to said

matters were fully argued and submitted to the Commission for determination on behalf of said parties by their respective counsel, including many of the particular questions raised by plaintiffs in this suit, whereupon the Commission determined said matters and entered and served upon all the parties to said proceedings, including the plaintiffs herein, its said report; that said report and subsequent orders of January 9 and February 8, 1956, included the Commission's findings of fact, conclusions and requirements in the premises, and that, upon the evidence as aforesaid, and as shown in and by said report, the Commission made the findings and stated the conclusions upon which its said report and orders were based.

[fol. 36] These defendants further allege that the findings and conclusions of said report were and are, and that each of them was and is, fully supported and justified by the evidence submitted in said proceedings as aforesaid.

These defendants further allege that in making said report and orders, the defendant Commission considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance and condition called to its attention on behalf of the parties to said proceedings by their respective counsel, including many of the matters covered by the allegations of the amended complaint herein.

These defendants further allege that the defendant Commission's said report and its subsequent orders of January 9 and February 8, 1956, were not made or entered either arbitrarily or unjustly, or contrary to the relevant evidence, or without evidence to support them; that in making said report and orders the Commission did not exceed the authority which had been duly conferred upon it, and these defendants deny each and all of the allegations to the contrary contained in the amended complaint. These defendants deny that the Commission's said report and orders are unreasonable, arbitrary, unlawful, or null and void for any of the reasons set forth in the amended complaint or for any other reason or reasons. These defendants deny that the Commission's said report and orders cause, or will cause, plaintiffs either irreparable damage or any damage if said report and orders are not enjoined.

Except as herein expressly admitted, these defendants deny the truth of each and all of the allegations contained

in the amended complaint, insofar as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in said report and orders.

[fol. 37] All of which matters and things these defendants are ready to aver, maintain and prove as this Honorable Court shall direct, and hereby pray that said amended complaint be dismissed.

/s/ James E. Kilday, /s/ E. Riggs McConnell, Attorneys, Department of Justice, Washington 25, D. C.

Stanley N. Barnes, Assistant Attorney General; A. Pratt Kesler, United States Attorney; Attorneys for the defendant United States of America.

/s/ Robert W. Ginnane, General Counsel; /s/ Charlie H. Johns, Assistant General Counsel; Attorneys for the defendant Interstate Commerce Commission.

CERTIFICATE OF SERVICE

I Certify that a true copy of the foregoing Answer was served by mailing this 14th day of March 1956, to counsel for all parties of record.

/s/ Albert Parker

[fol. 38] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION.

[Title omitted]

STIPULATION RE MOTIONS FOR TEMPORARY RESTRAINING ORDER, INTERLOCUTORY INJUNCTION AND HEARING OF CASE—March 19, 1956

Come Now the plaintiffs, the defendants and the intervenors, through their respective counsel and stipulate as follows:

1. That at the time of hearing on the plaintiffs' Motion for a Temporary Restraining Order, it was agreed in open court by all parties hereto as follows:

(a) That any Order entered by the Court on the plaintiffs' Motion for a Temporary Restraining Order should remain in full force and effect until the hearing on the plaintiffs' Motion for an Interlocutory Injunction.

(b) That the plaintiffs' Motion for an Interlocutory Injunction may be heard by the Three Judge Court at the same time as such Court hears the matter on its merits.

2. It is further stipulated that it is agreeable to all parties that the case be set for hearing on the merits and on the plaintiffs' Motion for an Interlocutory Injunction at the hour of 10:00 a.m. on the 9th day of April, 1956.

Dated this 19th day of March, 1956.

Public Service Commission of Utah and Utah Citizens Rate Association, By /s/ Calvin L. Rampton.

[fol. 39] Interstate Commerce Commission, By /s/ Geo. W. Howard.

United States of America, By /s/ A. Pratt Kesler.
Intervening Railroads, By /s/ Bryan P. Leverich.

[fol. 40] UNITED STATES DISTRICT COURT, DISTRICT OF UTAH, SALT LAKE CITY, UTAH.

Hon. John C. Pickett
Hon. Willis W. Ritter
Hon. A. Sherman Christenson

MINUTE ENTRY OF APRIL 9, 1956

April 9, 1956

C 8-56

PUBLIC SERVICE COMMISSION OF UTAH AND UTAH CITIZENS RATE ASSOCIATION,

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION.

This matter came on for hearing before the Court on April 9, 1956, at 10:00 a.m. Presiding in the case were Hon.

John C. Pickett, a member of the Court of Appeals of the Tenth Circuit, the Hon. Willis W. Ritter, Chief Judge, and the Hon. A. Sherman Christenson, Judge, both of this Court.

Public Service Commission of Utah was represented by Raymond W. Gee, Esq., Deputy Attorney General; the Utah Citizens Rate Association, by Calvin L. Rampton, Esq.; Union Pacific Railroad Company and Ogden Union Railway & Depot Company, by A. U. Miner, Esq., of Salt Lake City, and W. H. Fitzpatrick, Esq., of Omaha, Nebraska. The Denver & Rio Grande Western Railroad Company and Tooele Valley Railway Company were represented by S. N. Cornwall, Esq.; the Southern Pacific Company, by Albert Bowen, Esq. Western Pacific Railroad Company was represented by Peter W. Billings, Esq.; Interstate Commerce Commission was represented by Charles H. Johns, Assistant General Counsel; and the government was represented by A. Pratt Kesler, Esq., United States Attorney.

Upon motion of Mr. Kesler, Mr. Johns was admitted to this Court for the purpose of this case only. On motion of Mr. Miner, Mr. Fitzpatrick was admitted to this Court for the purpose of this case only.

It was stipulated between all counsel that the temporary restraining order heretofore made may remain in effect until a decision in this case. Plaintiffs' Exhibits 1 to 1(f) were marked and offered and the Court reserved its ruling. Counsel for both sides are to submit briefs relative to the admission of these exhibits. Exhibits 2 and 2(a) and 3 to 6, inclusive, were received. Plaintiffs then rested. Briefs were then filed for and on behalf of all defendants, after which both sides rested. Argument was then made by Mr. Rampton until Noon, at which time the Court recessed to 2:00 p.m.

The Court convened on April 9, 1956, at 2:00 p.m., with all parties present, and further argument was made by Mr. Rampton. Arguments were then made by Mr. Johns, Mr. Miner, and Mr. Fitzpatrick, until the hour of adjournment; and the Court then recessed to Tuesday, April 10, 1956, at 9:30 a.m.

[fol. 41] Court convened on Tuesday, April 10, 1956, at 9:30 a.m., with all parties present. Mr. Fitzpatrick resumed his argument, after which the Court listened to further argument on behalf of Mr. Rampton and brief statements by Mr. Johns and Mr. Miner. Mr. Johns was granted permission to furnish the Court with a certified copy of portions of the argument in this case made before the Interstate Commerce Commission.

All parties having concluded their arguments and having rested, the Court took the matter under advisement and adjourned.

cc—

A. Pratt Kesler, Esq., U. S. Atty.

Raymond W. Gee, Deputy Atty. Gen., State Capitol Bldg., Salt Lake City, Utah.

Calvin L. Rampton, Esq., 721 Continental Bank Bldg., Salt Lake City, Utah.

S. N. Cornwall, Esq., Walker Bank Bldg., Salt Lake City, Utah.

A. H. Nebeker, Esq., Kearns Bldg., Salt Lake City, Utah.

Peter W. Billings, Esq., Continental Bank Bldg., Salt Lake City, Utah.

W. H. Fitzpatrick, Esq., Union Pacific Railroad, Omaha, Nebraska.

Geo. W. Howard, 452 Federal Bldg.

Charles H. Johns, Esq., Associate General Counsel, Interstate Commerce Commission, Washington, D.C.

Bryan P. Leverich, A. U. Miner, U. P. Bldg.

OKC/ea

[fol. 42] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

PUBLIC SERVICE COMMISSION OF UTAH and UTAH CITIZENS RATE ASSOCIATION, Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants,

and

UNION PACIFIC RAILROAD COMPANY, THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, SOUTHERN PACIFIC COMPANY, THE WESTERN PACIFIC RAILROAD COMPANY, BAMBERGER RAILROAD COMPANY, THE OGDEN UNION RAILWAY AND DEPOT COMPANY, SALT LAKE-GARFIELD AND WESTERN RAILROAD COMPANY, TOOELE VALLEY RAILWAY COMPANY, and UTAH RAILWAY COMPANY, Intervenors.

OPINION—May 23, 1956

E. R. Collister, Attorney General, Raymond W. Gee, Deputy Attorney General, Keith E. Sohm, Commerce Attorney, Salt Lake City, Utah, for plaintiff Public Service Commission; Calvin L. Rampton, Salt Lake City, Utah, for plaintiff Utah Citizens Rate Association;

Stanley N. Barnes, Assistant Attorney General, James E. Kilday, E. Riggs McConnell, Attorneys Department of Justice, Washington, D. C., and A. Pratt Kesler, United States Attorney, Salt Lake City, Utah, for defendant United States of America; Robert W. Ginnane, General Counsel, Charlie H. Johns, Assistant Counsel, I.C.C., Washington, D.C., and George W. Howard, Salt Lake City, Utah, for defendant Interstate Commerce Commission;

Bryan P. Leverich, S. N. Cornwall, A. H. Nebeker, Peter W. Billings, John H. Snow, A. S. Frederickson, and J. E. Morgan, Salt Lake City, Utah, for Intervening Defendants.

BEFORE PICKETT, United States Circuit Judge, RITTER, Chief Judge, and CHRISTENSON, United States District Judges.

PICKETT, United States Circuit Judge.

[fol. 43] The Public Service Commission of the State of Utah and the Utah Citizens Rate Association brought this action to set aside and enjoin the enforcement of an order of the Interstate Commerce Commission granting an increase of intrastate freight rates in Utah in a proceeding under §13(3) and (4) of the Interstate Commerce Act. 49 U.S.C.A., §13(3), (4).[1] The Class I railroads operating in Utah intervened. A statutory three-judge court was constituted and an interlocutory injunction granted pending a hearing on the merits of the case.

[fol. 44] The underlying proceedings which give rise to this action originated in 1951 before the Interstate Commerce Commission, entitled "Increased Freight Rates 1951", herein referred to as "Ex Parte 175", wherein Class I railroads of the United States sought an overall increase in interstate freight rates. After some percentage increases had been authorized, the Commission, on April 11, 1952, granted increases totaling 15% to all railroads on interstate rates. 284 I.C.C. 589. This increase was subject to certain

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[1] 49 U.S.C.A. §13(4), reads as follows:

"Whenever in any such investigation the commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes an undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding."

exceptions and hold-downs. The railroads operating in Utah made application to the Public Service Commission of Utah for increases in intrastate rates in the same percentage as those granted in Ex Parte 175.

The Utah Commission refused to grant the increases and Section 13 proceedings were instituted before the Interstate Commerce Commission, which entered into an investigation of the Utah intrastate rates. A full and complete hearing was had, at which evidence was offered by the railroads and [fol. 45] by protestants, including these plaintiffs. The Interstate Commerce Commission, with exceptions, found that the Utah intrastate rates and charges were abnormally low; that conditions incident to intrastate transportation in Utah were not more favorable than those incident to interstate transportation in that state; that traffic thereunder failed to produce its fair share of earnings required to yield the railroads sufficient revenue to provide adequate and efficient railway transportation service to accomplish the purposes of the Interstate Commerce Act, and that Utah intrastate rates cast an undue burden upon interstate commerce. 297 I.C.C. 87.[2] It was also found that the undue

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[2] The Commission's findings, (297 I.C.C. 105,) are as follows:

"1. The conditions incident to the intrastate transportation of freight in Utah are not more favorable than those incident to the interstate transportation between Utah and adjoining States.

"2. The amounts and percentages by which interstate freight rates and charges between points in Utah and points in other States were increased, as authorized in Ex Parte No. 175, are just and reasonable.

"3. The present Utah intrastate rates and charges on carload and less-than-carload freight, except on sugar beets and beet-sugar final molasses destined to sugar factories, and excepting certain rates on coal, sheep, and cattle, hereinafter enumerated, imposed by authority of the State, are abnormally low, and traffic thereunder fails to produce its fair share of the earnings required to yield revenue sufficient to enable the respondents, under honest, economic, and efficient management, to provide adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service, and thereby accomplish the purposes of the Interstate Commerce Act, as set forth in the national transportation system adequate to meet the needs of the commerce of the United States, of the postal service, and of the national

[fol. 46] burden and unjust discrimination should be removed by applying to the Utah intrastate rates and charges the interstate increase authorized in Ex Parte 175 on like [fol. 47] intrastate traffic. The increases, however, were limited by the provision "that increases may not be made

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defense. The burden thus cast upon intrastate rates and charges are less than they would be on the bases herein prescribed; and these intrastate rates and charges cause, and for the future will cause, undue, unreasonable, and unjust discrimination against interstate commerce.

"4. The undue, unreasonable, and unjust discrimination herein found to exist should be removed by applying to the Utah intrastate rates and charges, on the commodities and traffic herein described, the same respective increases as are and for the future may be maintained by the respondents on like interstate traffic between points in Utah and adjoining States under our authorization in Ex Parte No. 175, provided that increases may not be made in intrastate rates to levels higher than the interstate rates on like traffic to or from Utah for like or greater short-line distances over the same lines of railroad, except in instances where the interstate rates, and not the intrastate rates, are designated as published to meet motor-carrier competition.

"5. The establishment of increases in intrastate rates and charges as prescribed in finding 4 will not result in unreasonable rates, or rates that are unreasonable in relation to interstate rates, and will substantially increase the respondents' annual revenues.

"6. The increased revenues to the respondents which will result from the increased rates and charges as provided in finding 4 are required from intrastate traffic in Utah in order to enable the respondents to provide adequate and efficient railway transportation service.

"7. In certain instances it appears that the present Utah intrastate rates are now as high as corresponding interstate rates including the Ex Parte No. 175 increases for comparable distances. The intrastate rates specified below, are excepted from the findings herein:

"Rates on coal, viz:

"From Castle Gate to Milford, Utah, slack and other sizes.

"From Castle Gate to Lund, Utah, slack and other sizes.

"From Castle Gate to Devil's Slide, Utah, slack.

"Rates on sheep, in double-deck cars, viz:

"From Lakewide to Wahsatch, Utah.

"From Cedar City to Kaysville, Utah.

"Rates on cattle, in single-deck cars, viz:

"From Spanish Fork to Ogden, Utah."

in intrastate rates to levels higher than the interstate rates on like traffic to or from Utah for like or greater short-line distances over the same lines of railroad, except in instances where the interstate rates, and not the intrastate rates, are designated as published to meet motor-carrier competition." It is conceded that the findings meet the requirements of King v. United States, 344 U.S. 254, but it is urged that the evidence does not sustain them.

The Utah Commission did not authorize the increases within the time provided in the order and the railroads were then directed by the Interstate Commerce Commission to make the 15% increase effective on Utah intrastate rates as of March 13, 1956. This action followed.

The matter is before us on the record of the Interstate Commerce Commission proceedings under Section 13. At the opening of the trial the plaintiffs introduced in evidence the Interstate Commerce Commission records and, in addition, offered the record of proceedings made before the [fol. 48] Public Service Commission of Utah. The court reserved ruling on the admissibility of the latter record, which had not been introduced in the proceedings before the Commission. It is well settled that when an order of the Interstate Commerce Commission is questioned in an action of this nature, the court shall consider only such matters as were before the Commission prior to the issuance of its order. Tagg Bros. & Moorehead v. United States, 280 U.S. 420, 443; Louisville & Nashville R. Co. v. United States, 245 U.S. 463, 466; New York v. United States, 331 U.S. 284, 335; Sakis v. United States, 103 F.Supp. 292, App. Dismissed, 344 U.S. 801. The record in the State proceeding is irrelevant and the objection to its admission in evidence is sustained.

The power of Congress to authorize the Interstate Commerce Commission to establish intrastate rates in order to remove unjust discrimination against interstate commerce is not open to dispute. The plaintiffs here do not question that power, although they do question the reasonableness of the increases in Ex Parte 175. See King v. United States, [fol. 49] 344 U.S. 254, 274; Florida v. United States, 282 U.S. 194, 211. It appears quite clear that Congress intended that the railway system of the country shall have a reason-

able return to carry out the purposes of the Interstate Commerce Act, which would include compensation for intrastate business reasonably proportionate with the interstate business. Wisconsin R. Commission v. Chicago, B & Q R. Co., 257 U.S. 563, 588; Illinois Commerce Commission v. United States, 292 U.S. 474, 483. "The fundamental purpose of the Congress in enacting Section 13, subdivisions (3) and (4), was to reach intrastate rates that were found to result in unjust discrimination against interstate commerce." Florida v. United States, 282 U.S. 194, 210. The purpose of §13(4) is not limited to the removal of unjust and unreasonable discriminations against interstate commerce as it relates to persons and localities, but it imposes on the commission the affirmative duty "to take other important steps to maintain an adequate railway service for the people of the United States." Wisconsin R.R. Commission v. C.B. & Q.R. Co., 257 U.S. 563, 585; Florida v. United States, 282 U.S. 194.

[fol. 50] In determining the validity of an order of this nature, a reviewing court may not weigh the evidence; it may not negative the action of the Commission, being "one of those agencies presumably equipped or informed by experience to deal with the specialized field of knowledge, whose findings within that field carry the authority of an expertness which courts do not possess and therefore must respect," if from a consideration of the entire record there is a rational basis for the action. Universal Camera Corp., v. Labor Board, 340 U.S. 474, 488. The court may set aside the order, "when it cannot conscientiously find that the evidence supporting that decision is substantial, when viewed in the light that the record in its entirety furnishes, including the body of evidence opposed to the Board's view." Universal Camera Corp. v. Labor Board, supra.

In Interstate Commerce Commission v. Jersey City, 322 U.S. 503, 513, it was said: "* * * 'So long as there is warrant in the record for the judgment of the expert body it must stand. * * * The judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body.' Rochester Telephone Corp. v. United States, 307 U.S. 125, 145-46;

[fol. 51] Miss. Valley Barge Line Co. v. United States, 292 U.S. 282, 286-87."

The principal contention of the plaintiffs is that the evidence does not sustain the finding that the existing intrastate rates cause undue, unreasonable and unjust discrimination against interstate commerce. It is said that the evidence fails because there has been no separation of interstate and intrastate costs and revenues. The evidence is to the effect that there is no distinction in the handling of interstate and intrastate freight shipments. They are both handled on the same trains, by the same crews; the same accounting department, the same traffic department, and the same facilities are used in the dispatch of both shipments. Under such conditions, the contention of the plaintiffs has been rejected by the courts. King v. United States, supra; Illinois Commerce Commission v. United States, supra; State of North Carolina v. United States, 128 F.Supp. 718, Aff. 350 U.S. 805. In the Illinois Commerce case, the court said, (292 U.S. 474, 483-484):

> [fol. 52] "Where the conditions under which interstate and intrastate traffic move are found to be substantially the same with respect to all factors bearing on the reasonableness of the rate, and the two classes are shown to be intimately bound together, there is no occasion to deal with the reasonableness of the intrastate rates more specifically, or to separate intrastate and interstate costs and revenues."

This does not mean that there must be a uniformity in interstate and intrastate rates. Intrastate transportation is primarily the concern of the state. The Interstate Commerce Commission is without authority to supplant intrastate rates unless there are findings supported by evidence that conditions exist which may bring §13(4) into play. To authorize an interference with intrastate rates, it must be shown that the intrastate and interstate traffic are intimately bound together; that the conditions incident to intrastate transportation are no more favorable than those incident to interstate traffic, and that the intrastate rates involved are abnormally low and are not contributing their fair share of the revenue to which the railroads are entitled.

The mere existence of a disparity in rates is not enough to warrant interference by the Interstate Commerce Com- [fol. 53] mission. North Carolina v. United States, 325 U.S. 507, 516. The State Commission has complete control of intrastate rates so long as those rates do not unduly burden or discriminate against interstate commerce.

In finding that such a burden and discrimination existed, the Commission did not rely entirely on the disparity in rates. It was shown that the conditions under which interstate and intrastate traffic move were substantially the same with respect to all factors bearing on the reasonableness of the rates. The railroads' general need for additional revenue was established in Ex Parte 175. There is evidence to the effect that the earnings on the railroads' investments in Utah are below the national average. The economic ability of the Utah traffic to bear the 15% increase found necessary in Ex Parte 175 was shown. The economic conditions in Utah in 1950 had improved greatly over the preceding period, both actually and relatively. Wages were higher than the national average; higher wages and costs of operation which the railroads had to pay in Utah and elsewhere were shown; there had been a substantial increase [fol. 54] in the railroads' property investment in the State, while there was a decrease in net operating income. The cost of handling intrastate shipment was found to be as great, if not greater, than the handling of interstate freight. The percentage of return on net investment of the railroads in Utah was 3.82% in 1953, as compared with 3.98% in 1948, 2.58% in 1949, 4.33% in 1950, 3.66% in 1951, and 3.91% in 1952. The record also shows that in 1952 the revenue per ton mile of railroads in the United States was 1.43 cents; in the Western District, 1.393 cents; and in the Mountain Pacific states, which includes Utah, 1.398 cents per ton mile; and in the State of Utah, on intrastate and interstate traffic, 1.258 cents per ton mile. The total annual loss to the railroads caused by the failure to grant the requested increase in Utah was estimated at $1,880,347.[3]

[3] In Illinois Commerce Comm'n. v. United States, 292 U. S. 474, 479, the court said:

"The scope and application of §13(4) have so recently been fully considered in opinions of this Court in United States v.

[fol. 55] In State of North Carolina v. United States, 128 F. Supp. 718, Aff. 350 U.S. 805, the state sought to nullify an order of the Interstate Commerce Commission, applying the Ex Parte 175 rates to intrastate freight in North Carolina. There may be some varying conditions, but on the whole the case was the same as the one before us. In answering the argument that the record did not disclose that the intrastate rates resulted in an undue discrimination against interstate commerce, the court said (P. 722, 723):

"Plaintiffs contend that there was no sufficient showing of discrimination against interstate commerce and in favor of intrastate commerce resulting from the intrastate rates. It appears, however, that, without the Ex parte No. 175 increases on any of their traffic in 1953, the return on net investment in 1953 for the four principal carriers receiving 87% of the intrastate revenue would have been 0.94% for the Norfolk Southern, 4.63% for the Seaboard, 4.35% for the Southern and a deficit of more than $4,000,000 for the Atlantic Coast Line, or a combined return for the four roads of 2.84%. This is not a case, then, as plaintiffs argue, where an unnecessary increase was granted in a prosperous territory because of a need in other sections. The need for increase existed in North Carolina as these figures show, and the Commission estimated that the total loss from the non-application of the increase in 1953 was $1,500,000. As the cost of handling intrastate freight was shown to be as great as or greater than the handling of interstate freight, the raising of interstate rates without raising intrastate rates necessarily resulted in throwing an undue share of the cost of the service upon interstate transportation. As said by Mr. Justice Stone in Illinois Commerce Commis-

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Louisiana, 290 U. S. 70; Florida v. United States, ante, p. 1; see also Georgia Public Service Commn. v. United States, 283 U. S. 765; Florida v. United States, 282 U. S. 194; that it is unnecessary to repeat that discussion here. Under 213(4) of the Interstate Commerce Act, the Interstate Commerce Commission is given plenary power to remove the discrimination created by intrastate rates so that the interstate traffic may produce its fair share of the revenue required to meet maintenance and operating costs and to yield a fair return on the value of property devoted to the transportation service."

sion v. United States, 292 U.S. 474, 485, 54 S. Ct. 783, 787, 78 L. Ed. 1371, 'The effect of maintaining a lower rate, intrastate, than the reasonable interstste rate is necessarily discriminatory wherever the two classes of traffic, inextricably intermingled, are carried on, as in the District, under substantially the same conditions.'

[fol. 56] "In Railroad Commission of State of Wisconsin v. Chicago, B. & Q. R. Co., 257 U.S. 563, 586; 42 S.Ct. 232, 236, 66 L.Ed. 371, Chief Justice Taft, speaking for the court said:

> 'If the railways are to earn a fixed net percentage of income, the lower the intrastate rates, the higher the interstate rates may have to be. The effective operation of the act will reasonably and justly require that intrastate traffic should pay a fair proportionate share of the cost of maintaining an adequate railway system. * * * If that purpose is interfered with by a disparity of intrastate rates, the Commission is authorized to end the disparity by directly removing it, because it is plainly an 'undue, unreasonable, and unjust discrimination against interstate or foreign commerce' within the ordinary meaning of those words.' * * * "

In similar cases concerning the same matter, Louisiana Public Service Commission v. United States, 125 F. Supp. 180, Aff. 348 U.S. 885, sustained the order of the Interstate Commerce Commission, and Mississippi Public Service Commission v. United States, 124 F. Supp. 809, Aff. 349 U.S. 908, with one judge dissenting, set aside and enjoined the enforcement of the order.

Plaintiffs' contention that the order relating to the Utah intrastate rates is invalid because of the flat percentage increase of 15% in Ex Parte 175, with a savings clause, was contrary to law, is without merit. The validity of the Commission's order in Ex Parte 175 is not subject to a collateral attack. Callanan Road Co. v. United States, 345 [fol. 57] U.S. 507, 512; Securities & Exchange Commission v. Central-Illinois Securities Corp., 338 U.S. 96, 143; City of Tulsa v. Midland Valley R. Co., 168 F.2d 252. The determination of just and reasonable rates is for the Com-

mission, not the courts. Montana-Dakota Utilities Co. v. Public Service Commission, 341 U.S. 246, 251; Swayne & Hoyt, Ltd. v. United States, 300 U.S. 297, 304; Interstate Commerce Commission v. Illinois Central R.R. Co., 215 U.S. 452, 470; Manufacturers Ry. Co. v. United States, 246 U.S. 457, 481; Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co., 204 U.S. 426. The courts, in appropriate cases, have upheld flat horizontal percentage rate increases which contained a savings clause to prevent injustices. United States v. State of Louisiana, 290 U.S. 70; The New England Divisions Case, 261 U.S. 184, 187; Wisconsin R. Commission v. Chicago, B. & Q. R. Co., supra.

The plaintiffs urge that the record discloses that the Utah intrastate rates, without the 15% increase, are contributing more, not less, than their fair share of the overall revenue needs of the railroads. The Commission did not [fol. 58] so find. While the exhibits, in some instances, show intrastate rates equal to or even higher than interstate service, this may result from varying causes which are not material here. The clear import of the Commission's order is that increases in intrastate rates shall not be made to levels higher than interstate rates for like traffic. The order is also without prejudice to a reexamination as to the lawfulness of any individual Utah intrastate rate on any particular commodity.

We have considered the voluminous record and conclude that the findings of the Commission are supported by substantial evidence. The complaint is dismissed and the interlocutory injunction dissolved; costs to be assessed to the plaintiffs.

Dated this 23 day of May, 1956.

John C. Pickett, Circuit Judge; Willis W. Ritter, District Judge.

[fol. 59] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION.

No. C-8-56

PUBLIC SERVICE COMMISSION OF UTAH, and CITIZENS RATE ASSOCIATION, Plaintiffs,

v.

UNITED STATES OF AMERICA, and INTERSTATE COMMERCE COMMISSION, Defendants,

and

UNION PACIFIC RAILROAD COMPANY, THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, SOUTHERN PACIFIC COMPANY, THE WESTERN PACIFIC RAILROAD COMPANY BAMBERGER RAILROAD COMPANY, THE OGDEN UNION RAILWAY AND DEPOT COMPANY, SALT LAKE-GARFIELD AND WESTERN RAILROAD COMPANY, TOOELE VALLEY RAILWAY COMPANY, and UTAH RAILWAY COMPANY, Intervenors.

CHRISTENSON, District Judge (Dissenting)—May 23, 1956

I dissent from the holding of the majority that there is substantial evidence in the record supporting the order of the Interstate Commerce Commission in this case. There is agreement upon all of the other points decided and with the statement of principles contained in the prevailing opinion. It is submitted, however: (I) that the decisions of the Supreme Court of the United States do not warrant [fol. 60] the applications made; (II) that the record itself does not furnish any substantial basis for the Commission's ultimate findings; (III) that to bring the case within the doctrine of *Illinois Commerce Commission et al.* v. *United States et al.*, 292 U. S. 474, 54 S. Ct. 783, 78 L. Ed. 1371, unauthorized presumptions would have to be indulged and evidence not before the Court would have to be assumed; and (IV) that the rationale of the decision would mean that increases applied nationwide by the Interstate Commerce Commission, coupled with matters of common knowledge and unwarranted presumptions concerning the inter-rela-

tionship of interstate and intrastate traffic, automatically justify corresponding intrastate increases at the will of the Interstate Commerce Commission—a result at once inconsistent with the relationship between affairs national and local, at variance with controlling decisions, and not in keeping with the national transportation policy itself. The far-reaching issue thus presented will excuse—I believe that it requires—my presuming to state views on the foregoing points as they differ from those of my respected colleagues.

I.

The prevailing opinion properly recognizes that there need not be uniformity in interstate and intrastate rates; that intrastate transportation is primaily the concern of the state; and that the Interstate Commerce Commission is without authority to supplant intrastate rates unless there are findings supported by evidence that conditions exist which bring Section 13(4) of the Interstate Commerce Act, *49 U.S.C.A. 13(4)*, into operation. The most direct and positive way to show jurisdictional facts in dis-[fol. 61] pute here would be to break down operating figures, both as to income and expense, on an intrastate basis in order to permit comparison with corresponding interstate figures. The railroads have said that this is impracticable, and no doubt it is in many cases. The decision in *Illinois Commerce Commission et al.* v. *United States et al., supra*, dispenses with the necessity of producing such figures if certain other facts are shown to exist. The rule requiring such other showing in the absence of the type of direct evidence mentioned is not a mere generality obviating the need of proof. It is a substitute formula to be looked to for the establishment of jurisdiction if, and only if, the elements on which the formula is premised be established.

Illinois stands for the proposition that where the conditions under which interstate and intrastate traffic move are found to be substantially the same with respect to all factors bearing on the reasonableness of the rate, and the two classes are shown to be intimately bound together, there is no occasion to deal with the reasonableness of the intrastate rates more specifically, or to separate intrastate

and interstate costs and revenues. It must be noted that it is not sufficient in order to justify the application of this doctrine that the two classes are intimately connected, and it is not sufficient that some conditions affecting the respective rates have common application. It must also appear that conditions are substantially the same with respect to all factors bearing on reasonableness or that conditions incident to the intrastate transportation of freight are not more favorable than those incident to interstate transportation, which latter idea will be included in the concept of [fol. 62] "sameness" hereinafter referred to. Logically, as well as from the language of the decision, this seems inescapable. A substantial divergence of some, though not most, of the factors would destroy the very basis of the formula. It should be further observed that in *Illinois Commerce Commission et al.* v. *United States et al., supra,* there was involved a somewhat different factual problem than is presented here. The rates were not statewide, but covered the "Chicago Switching District". The district was essentially a unit as far as switching operations were concerned. Movements were chiefly between local industries and involved a complete service originating and terminating within the district, although the district was intersected by the boundary between the states of Illinois and Indiana.

King et al. v. *United States et al.*, 344 U. S. 254, 73 S. Ct. 259, 97 L. Ed. 301, determined that the Interstate Commerce Commission in prescribing intrastate freight rates for railroads under Section 13(4) of the Interstate Commerce Act, may give weight to deficits in passenger revenue. The Court held that there was no evidence which would require the Commission to treat Florida intrastate rates differently from interstate rates in southern territory. It was pointed out that whereas, in *State of North Carolina* v. *United States*, 325 U. S. 507, 65 S. Ct. 1260, 89 L. Ed. 1760, there was evidence to indicate that the conditions in that state were more favorable to profitable intrastate transportation of passengers than in the nation at large, the Commission's findings in the King case were to the contrary. No question was raised as to the adequacy [fol. 63] of the evidence upon which the findings were based

and thus, this case is not very helpful on the crucial problem here.

In *State of North Carolina* v. *United States, supra,* the principles are laid down that intrastate transportation is primarily the concern of the state; that the power of the Interstate Commerce Commission with reference to such intrastate rates is dominant only so far as necessary to alter rates which injuriously affect interstate transportations; that before the Commission can nullify a state rate, justification for the exercise of the federal power must clearly appear; and that the Interstate Commerce Commission is without authority to supplant a state-prescribed intrastate rate unless there are clear findings, supported by evidence, of each element essential to the exercise of that power by the Commission. In the light of these principles, the Supreme Court examined the sufficiency of the Commission's findings and found them insufficient to support the order of the Commission. It stated: (p. 512)

> "In effect, the Commission's holding was, and its argument is here, that § 13(4) automatically requires complete uniformity in intrastate and interstate rates. That argument is in short that under our national transportation system interstate travelers and intrastate travelers use the same trains; for a state to fix a lower intrastate rate than the interstate rate is therefore an undue advantage to the intrastate passengers and an unfair discrimination against the interstate passengers. If Congress intended to permit such an oversimplified form of proof to establish 'unjust discrimination,' then its requirement for a 'full hearing' was mere surplusage."

Emphasizing the necessity that the basis of federal jurisdiction appears, it is further said: (p. 511)

[fol. 64] " * * * A scrupulous regard for maintaining the power of the state in this field has caused this Court to require that Interstate Commerce Commission orders giving precedence to Federal rates must meet a 'high standard of certainty'. Illinois Central R. Co. v. Public Utilities Commission, 245 U.S. 493, 510. Before the

Commission can nullify a state rate, justification for the 'exercise of federal power must clearly appear.' Florida v. United States, 282 U.S. 194, 211-212."

Four three-judge cases, three of them of recent date and each of them affirmed on motion without opinion by the Supreme Court, touch upon the problem here to varying degrees. They are referred to in the order in which they were decided.

State of New York et al. v. *United States et al.*, D.C.N.D. N.Y., 1951, 98 F.Supp. 855, affd. 342 U. S. 882, 72 S. Ct. 152, 96 L. Ed. 662, discussed the matter of similarity of transportation conditions, holding that whether similarity exists is a question of fact. It was stated that the term denotes a general likeness, an approximation, something less than an absolute identity. But the question of similarity was not involved in the way it is here. There was an attack on the similarity of services rendered New York and Connecticut commuters, and it was held that the findings of similarity of service was based upon evidence that appeared to be substantially undisputed. The opinion indicates that on the issue corresponding to the determinative one here, there were cost studies in evidence, and one of the principal disputes was whether the "train by train" method rather than the group method should be followed. The evidence adduced and the consideration by the Commission of the comparative cost items as indicated by the decision, make it appear that the case is not closely in point except [fol. 65] to indicate the general type of proof that has been offered heretofore in rate cases.

In *Louisiana Public Service Commission* v. *United States et al.*, D.C.E.D.La., Baton Rouge D., 1954, 125 F.Supp. 180, affd. 348 U. S. 885, 75 S. Ct. 205, 99 L. Ed. 696, rehear. den. 348 U. S. 921, 75 S. Ct. 289, 99 L. Ed. 723, the question of whether the findings of the Commission were supported by substantial evidence was summarily disposed of in a paragraph of the opinion. It was pointed out that the record comprised nearly one thousand pages of testimony and a great number of exhibits. The Court said:

"It is sufficient to say that the Commission had before it a large volume of substantial evidence adduced by both sides of the controversy. In reaching its conclusions it was necessary for the Commission to weigh the evidence. That was a function which peculiarly addressed itself to the expertise of the Commission."

Whether the four hundred pages of testimony in the case at bar covered the same fields as the record in the Louisiana case cannot be determined from the opinion. Certainly, the opinion does not settle the point of comparability which is determinative here.

The case of *Mississippi Public Service Commission* v. *United States et al.*, D.C.S.D. Miss., Jackson D., 124 F. Supp. 809, (one judge dissenting), affd. 1955, 349 U. S. 908, 75 S. Ct. 584, 99 L. Ed. 1244, directly passed upon the question of the sufficiency of the evidence contrary to the contentions of the railroad company. I cannot agree with two indications in the opinion of Judge Mize, who spoke for a majority of the three-judge court: (a) that to justify the order of the Commission it must be shown both that the disparity between rates operates as a discrimination against [fol. 66] interstate commerce *and* that it results in injury to interstate shippers; and (b) that in order to justify such an order there must be evidence distinguishing railroads' revenues, expenses and properties as between interstate and intrastate operations. On the first point, it is probable that the use of the conjunctive, with no support in the statute, *49 U.S.C.A. 13(4)*, was an inadvertence. On the latter proposition, the language, to be an accurate statement of the law, would have to contain the qualification that such separate treatment would be unnecessary only if the evidence failed to indicate the substantial similarity in both areas of all factors affecting rates within the doctrine of *Illinois*. As so interpreted, and considering the comments of Judge Mize on the evidence, or lack of it, as reasons why such comparable conditions were not established in the record, the decision is meaningful and compelling here.

In a similar case, appearing to be the latest to come before the Supreme Court, *State of North Carolina et al.* v. *United States et al.*, D.C.E.D.N.C., 1955, 128 F. Supp. 718,

affd. 1956, 350 U. S. 805, 76 S. Ct. 45, 100 L. Ed. 46, Judge Parker held for the Court that the ultimate findings of the Commission were supported by the evidence. Among these ultimate findings was one corresponding to a finding now before us that "The conditions incident to the intrastate transportation of freight in North Carolina are not more favorable than those incident to the interstate transportation in North Carolina and in the adjoining states." It was pointed out that the Commission had held a hearing for four days at which a great volume of testimony was re-
[fol. 67] ceived. But the sufficiency of the evidence was not an issue in this case. Judge Parker points out (p. 721), "* * * there is no contention that this finding of evidentiary facts is not amply supported by the evidence in the case. It is not necessary to repeat them here; but it is sufficient to say that they fully support the ultimate findings of the Commission * * *." The opinion in the North Carolina case does suggest, however, that there was more specific and pertinent evidence of common factors affecting rates than was before the Commission in the present case. I do not mean to discount this decision as a respected authority, but because of differences appearing in the nature of the evidence and the fact that the significant issue here was not raised in that case, I do not deem it to be controlling.

II.

It is conceded that the ultimate findings of the Commission, quoted in a footnote to Judge Pickett's opinion, support the order, since they are couched in language designed to comport with the doctrine of *Illinois*, and closely follow the form of the ultimate findings approved in the *King* case. When the subsidiary findings of the Commission are looked to, however, a different picture is presented, even apart from evidentiary foundations or lack of them. Except for general references to the similarity of conditions as between intrastate and interstate commerce and certain unsupported conclusions discounting the effect of the affirmative evidence adduced on behalf of those opposing the increase, the facts set out in these subsidiary findings seem to recognize a substantial difference in con-

[fol. 68] ditions affecting rates. The report notes, among other things, that based on annual reports filed by four of the principal respondents with the Utah Commission, it appears that the interstate freight-service ratio (freight-service expense divided by freight-service revenue) and the intrastate density (ton-miles per mile of main-line track) are as to each respondent more favorable than correspondent systemwide figures, for 1953 as shown in the report. Such figures showing a very marked difference are set out in the report. But with reference to these, the Commission adds:

> "* * * The Union Pacific and the other respondents dispute the validity of the results obtained from the application of the formula. They assert that the reports do not reflect the actual cost of operation in Utah and therefore afford no basis for comparing operating costs. One of the principal objections to the density above shown is that they were obtained by using only the miles of main track. The density results would be substantially reduced if branch-line mileage were included. The comparisons thus made are of little significance in our determination here. A more important consideration is the positive showing made upon this record that the average unit expense of servicing Utah intrastate traffic is at least as great as that of servicing interstate traffic to and from Utah."

The evidentiary basis in the record of the statement that a positive showing was made that the average unit expense of servicing Utah intrastate traffic is at least as great as that of servicing interstate traffic to and from Utah, cannot be found in the transcript, nor can I find it referred to in the briefs of the respondents. The record seems devoid of a comparison of conditions bearing on the reasonableness of rates, except for such common factors as were held in the first North Carolina case to be insufficient in the findings to support an order. It does not seem enough for the Commission to point to evidence of admitted differences in [fol. 69] relevant factors and to say that the differences are not as great as those opposing the increases claim, without some basis in the record upon which to premise a

finding that the differences are not substantial. The fact that in arriving at density figures combination main-line and branch-line track was not considered, does not seem to render the data insignificant, since the comparison was based upon main-line track nationally as well as locally. No facts appear which make the conclusion rational that the density figures would, on any theory, represent a factor having no substantial bearing on the reasonableness of the respective rates. It does not seem enough to say that the substantial effect was not as great as if both main-line and branch-line figures had been presented, or to ignore that effect because of vague "average unit expense" figures, neither qualitatively nor quantitatively compared therewith.

The subsidiary findings refer to an exhibit submitted by the Utah Commission portraying various operating statistics of the Denver and Rio Grande Western in Utah and Colorado, and for the entire system. This data on its face appears clearly to support a conclusion contrary to that arrived at by the Interstate Commerce Commission. The Commission dismisses the evidence by reference to its action in *Kansas City Chamber of Commerce* v. *Atchison, T. & S. F. Ry. Co.*, 164 I.C.C. 302, quoting its determination there, that the method of allocating revenues and expenses to a particular state was open to so many serious objections that the results obtained were unreliable. These objections were not developed in the evidence here, and no more reliable data were presented. In a similar summary manner, the study of the Utah Commission based on carload waybill statistics for 1952 showing the Utah intrastate ton-mile revenue as compared with the revenue per ton-mile [fol. 70] on interstate shipments originated during that year, separated as to the principal commodity groups, was dismissed as "not determinative of the issues before us", due to "marked differences in the lengths of haul as between intrastate and interstate traffic."

The prevailing opinion places stress upon the evidence that there is no discrimination in the handling of intrastate and interstate freight shipments, since they are both handled on the same trains, by the same crews, and by the same departments and it is stated that "Under such con-

ditions, the contention of the plaintiffs has been rejected by the courts." I cannot find that any court has gone to the extent of holding that such common treatment furnishes a basis of applying intrastate rate increases in the absence of evidence showing similar conditions with reference to all factors affecting rates.

It is true that Mr. Kroll testified on behalf of the railroads that no distinction is made between the two types of traffic; that the same crews, the same clerks, and the same trains haul interstate and intrastate traffic; that traffic is intermingled as between interstate and intrastate; and that intrastate shipments and interstate shipments move under "identically the same conditions". If an intrastate case can be made on such general testimony, largely within common knowledge, a hearing should not be necessary. Yet as far as the similarity of conditions affecting costs (as distinguished from actual rates charged without reference to cost) is concerned, this seems typical of the testimony on which reliance must be placed if the order is upheld.

[fol. 71] Other evidentiary matters mentioned in the prevailing opinion as a foundation for the Commission's conclusions are believed insufficient to permit plausible inferences to that effect in view of the record as a whole. Such disparity of rates as were shown are in both directions, and it is well established that mere disparity of rates establishes no sufficient bases for such an order. The railroads' need for additional revenue in general is beside the point. That the total yearly loss to the railroads caused by the failure to grant the requested increase in Utah was estimated at $1,880,347 means that a percentage increase applied to an existing rate theoretically will yield increased revenue. This has no probative force in regard to the problem at hand. To the extent that the record indicates that earnings on the railroads' investments in Utah are below the national average, their more favorable position locally from a cost standpoint in respect of density of traffic and the large percentage of intrastate freight carried in gondola cars from mines may not be ignored.

That economic conditions in Utah as of 1950 have improved greatly over the preceding period seems to have no determinative effect on a Section 13 case, since it is not

the ability of intrastate traffic to pay more than its fair share that is involved, but whether the intrastate rate is so low as to be an economic burden on interstate commerce. Furthermore, there seems much force to the plaintiffs' argument that Utah's present economic status, if anything, militates against the Commission's conclusion since it sug- [fol. 72] gests that in past years, while Utah's traffic has been essentially agricultural and relatively unproductive of revenue, its rates have moved up as a result of increases corresponding to nationwide increases, and that now that its economy has changed to predominantly mining and industry, the relative productivity of the traffic to the railroads would make the recent nationwide increases fairly inapplicable intrastate. Be this as it may, and conceding that evidence of general economic conditions locally may be helpful on other phases of a rate case, they do not tend to show that all factors affecting rates are substantially the same as between interstate and intrastate commerce for the purpose of the doctrine announced in *Illinois*. The figures on percentage of return on net investment of the railroads in Utah cited in the majority opinion follow no pattern logically adaptable to the Commission's conclusion. Thus, the latest percentage, 3.82% in 1953, is more than in 1949 and more than in 1951 but less than in 1948, 1950 and 1952. Comparative revenue figures per ton-mile, covering interstate and intrastate traffic lumped together without taking into consideration differences affirmatively shown to exist in factors affecting the respective costs, again may have a bearing on other phases of a rate case, but furnish no rational basis for concluding that all factors affecting costs are substantially the same for interstate and intrastate traffic, for they go no further than to suggest, if anything, a disparity in rates which admittedly is not enough. *North Carolina* v. *United States*, 325 U. S. 507, *supra*.

[fol. 73] Singly or in combination these factors, when viewed in context with the whole record, are believed not to supply a rational basis for the conclusion that the conditions attendant the intrastate transportation of freight in Utah are not more favorable than those incident to interstate transportation between Utah and adjoining states.

III.

Three unwarranted assumptions would seem necessary to logically sustain the decision of the Commission. One would be that prior to the application of the 15% increase nationwide, intrastate and interstate rates in Utah were in balance with reference to the cost-revenue factor so that each furnished its fair share of the total revenue needs. If this presumption could be applied in the absence of evidence in the record to support it, or in view of the kind of evidence before us, the making of a rate case would be exceedingly simple; i.e., (a) the rates, intrastate and interstate in Utah prior to the application of the nationwide increase affecting interstate commerce provided in Ex Parte 175 were reasonably in balance; (b) interstate rates have been increased 15%, and thus, intrastate rates are out of line by this percentage; (c) by increasing intrastate rates 15% the two classes are restored to balance so that each furnishes its fair share of general revenue requirements.

Another presumption would have to be indulged: that between the time of the last simultaneous increase, or at least subsequent to the increase under Ex Parte 175, no new factors affecting costs have developed to throw the [fol. 74] presumed balance out. The basis of this is furnished, if at all, by the testimony concerning the intermingling of interstate and intrastate traffic, which, as has been pointed out, is insufficient.

And there is another assumption that is required if the deficiencies are to be avoided. On the whole record it appears without dispute that there are different factors operating in progressive measure to influence intrastate rates as distinguished from rates intrastate from the standpoint of the revenue-cost ratio. The rapid development of the industrial and mining economy of Utah in relation to the nation as a whole, and its established incidents, including increasing traffic density, underscore the dissimilar conditions. No evidence to disprove this divergence nor to define, limit or measure its effect appears. The Commission in its report, however, as above pointed out, dismisses the significance of these factors and other studies directly measuring the differences, not on the basis of any opposing

studies or evaluations introduced at the hearing but, for example, in one instance by a general conclusion as to comparative unit costs finding no support in the evidence, and in another instance by referring to its determination in an entirely different case.

May it be assumed, without evidence in the record which would furnish a rational basis in and of itself, that as an agency presumably equipped or informed by experience to deal with a specialized field of knowledge, its conclusions are valid and unassailable here? If this be so, the pattern for virtually automatic application of nationwide rate in-
[fol. 75] creases to intrastate commerce would be complete.

But no decision of the Supreme Court countenances any such result. *Interstate Commerce Commission* v. *Louisville and Nashville Railroad Company*, 227 U. S. 88, 33 S. Ct. 185, 57 L. Ed. 431, expressly rejects the contention that "expertness" may take the place of evidence. As recognized by Judge Pickett, *Universal Camera Corp.* v. *NLRB*, 340 U. S. 474, 71 S. Ct. 456, 95 L. Ed. 456, authorizes the Court to set aside an order when it cannot conscientiously find that the evidence supporting it is substantial, when viewed in the light that the record furnishes, including the body of evidence opposed to the agency's views. In a recent commentary on the authorities in this field appearing in Harvard Law Review, April, 1956, p. 1020, et seq., Professor Louis L. Jaffee expresses it as follows: (p. 1027)

> "* * * Judicial review is designed, as has been said, to make sure that there is record evidence which provides a rational or logical basis for the finding and for the consequent presumption that the finding was in fact the product of reasoning from evidence. This must mean evidence in the case and in the context of the case. To abstract out of a case that part of the evidence which can be made to support a conclusion is to imagine an abstract case, a case that was never tried. * * * "

And he further comments: (p. 1040)

> "Courts usually demand that the particular agency convince the Court that its 'putative' expertness is rele-

vant to the finding in question and even then takes this expertness as but one factor in the agency decision which must run the gauntles of its common sense."

Chief Justice Hughes in *Consolidated Edison Co.* v. *NLRB*, 305 U. S. 197, 58 S. Ct. 882, 82 L. Ed. 1287, says that substantial evidence means "such relevant evidence as a rea- [fol. 76] sonable man might accept as adequate to support the conclusion."

The requirements of the Interstate Commerce Act, *49 U.S.C.A. 13(4)*, that a "full hearing" be had, coupled with the provisions of the Administrative Procedure Act, *5 U.S.C.A. 1001 et seq.*, negative the idea that the Interstate Commerce Commission, without evidence of substantial similarity of all factors affecting rates, and in the face of evidence showing dissimilar conditions, can, solely on the basis of its previous experience and authority, ignore the record and come to a determination independent of it. See also *Amarillo-Borger Express, Inc. et al.* v. *United States*, D.C.N.D., Tex., Dallas D., 1956, 138 F.Supp. 411: The legal effect of evidence is a question of law and a finding without evidence is beyond the jurisdiction of the Commission. Where the party affected is entitled to a hearing, the Interstate Commerce Commission cannot base an order establishing a rate on the information it has gathered for general purposes; the order must be based on evidence produced in the particular proceeding. *Interstate Commerce Commission* v. *Louisville and Nashville Railroad Company, supra.*

In reading the transcript before the Interstate Commerce Commission one may detect impatience on the part of some of the witnesses exposing the increase at any suggestion that they were called upon to produce a quantum of proof going to anything beyond an intimate connection between interstate and intrastate traffic in Utah and the difference in rates without the application of the 15% increase to intrastate traffic. In the argument before this Court the thesis was pursued that on the basis of common knowledge as to conditions in every state in the Union it [fol. 77] could be said that all factors influencing rates were the same, and it was intimated that without evidence

these matters of common knowledge would themselves justify the application of similar increases to the two classes of traffic. I fear that this is where the order of the Interstate Commerce Commission is leading us; that henceforth, if such orders be approved now that the problem has been squarely raised (as it does not appear to have been before) there will be no use for hearings before either the state commissions or the Interstate Commerce Commission with regard to intrastate rates, except as a mere formality in approval of nationwide increases.

What is substantial evidence is a matter on which there can be understandable differences of opinion for at best this is not a precisely measureable quantity or quality of evidence. However, it is the duty of each member of the court to determine whether minimum jurisdictional requirements have been met. I do not believe that they have been here, and with due regard for the considered majority view to the contrary, there can be no question at least but that the issue is worthy of focused consideration. The amount of money involved is considerable. It is vital that the railroads' rates, both intrastate and interstate, be adequate, and that the former should bear its full share of general revenue needs, but the relationship between state and federal governments is also important and delicate; and it is important that no rules be laid down which will impair that relationship contrary to the principles which Congress in the light of court decisions has laid down. To thus regard it will place no roadblock in the path of the railroads in obtaining adequate rates intrastate. It will [fol. 78] establish some signals which I believe should be observed for the protection of our entire system. It neither compromises nor weakens legitimate federal power in the field of commerce to expect that the basis for the exercise of that power be shown affirmatively by substantial evidence. Such insistence may appear to be a protection solely to the public one day, to the state on another, or to the railroads on yet another; but the by-passing of such requirement can, in the long run, injure all and may, through reaction, impair the power itself.

I would vacate the order of the Interstate Commerce Commission and enjoin the application of the increased

intrastate rates until, if at all, substantial evidence is presented before the Interstate Commerce Commission furnishing a rational basis for the conclusion that conditions under which intrastate and interstate traffic move in Utah are substantially the same with respect to all factors bearing on the reasonableness of the rates.

Dated this 23rd day of May, 1956.

A. Sherman Christenson, United States District Judge.

[fol. 79] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

Civil Action No. C-8-56

PUBLIC SERVICE COMMISSION OF UTAH and UTAH CITIZENS RATE ASSOCIATION, Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants,

and

UNION PACIFIC RAILROAD COMPANY, THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, SOUTHERN PACIFIC COMPANY, THE WESTERN PACIFIC RAILROAD COMPANY, BAMBERGER RAILROAD COMPANY, THE OGDEN UNION RAILWAY AND DEPOT COMPANY, SALT LAKE-GARFIELD AND WESTERN RAILROAD COMPANY, TOOELE VALLEY RAILWAY COMPANY, AND UTAH RAILWAY COMPANY, Intervenors.

FINDINGS OF FACT AND CONCLUSIONS OF LAW—
June 18, 1956

The above-entitled matter came on regularly for hearing on April 9, 1956, before a statutory three-judge court consisting of Hon. John C. Pickett, Judge of the United States

Court of Appeals for the Tenth Circuit, and the Hon. Willis W. Ritter and Hon. A. Sherman Christenson, District Judges of the United States District Court for the District of Utah; the plaintiffs being represented by Raymond W. Gee, Assistant Attorney General of the State of Utah, Calvin L. Rampton and Keith E. Sohn; the defendants being represented by A. Pratt Kesler, United States Attorney for the District of Utah, and C. H. Johns, Attorney for the Interstate Commerce Commission; and the intervening railroads being represented by W. H. Fitzpatrick and A. U. Miner; and the Court having received in evidence and considered the record of evidence submitted to and produced before the Interstate Commerce Commission, and having heard the arguments of counsel and considered their respective briefs submitted in connection therewith, [fol. 80] and being fully advised in the matter, now makes the following:

Findings of Fact

1. The plaintiff Public Service Commission of Utah is a statutory commission created by and existing under the laws of the State of Utah, and is vested with power and authority over intrastate freight rates of common carrier railroads within the State of Utah, except as such rates may cast an undue burden upon or discriminate against interstate commerce, and except as such rates may therefore be regulated and controlled by the Interstate Commerce Commission under Section 13 of the Interstate Commerce Act, pursuant to which act the orders involved herein were issued by the Interstate Commerce Commission; the plaintiff Utah Citizens Rate Association is a non-profit corporation organized under the laws of the State of Utah, having as its members various shippers of railroad freight within and from the State of Utah.

2. That during the year 1951 in a proceeding designated as "Ex Parte 175", wherein Class I Railroads of the United States sought an overall increase in interstate freight rates, the Interstate Commerce Commission undertook an investigation with respect to the level of such interstate freight rates, and after extended hearings and interim

percentage increases, said commission on April 11, 1952, granted to all of said railroads increases totalling 15 per cent on interstate freight rates, such increases being subject to certain exceptions and hold-downs.

3. Railroads operating in the State of Utah made application to the Public Service Commission of Utah requesting increases in intrastate freight rates comparable to and in the same percentage amounts as had been granted by the Interstate Commerce Commission on interstate rates in "Ex Parte 175." After hearing thereon, the Utah Commission refused to grant the requested intrastate increases, one of the main bases of the Utah Commission's refusal being that the railroads had made no separation between [fol. 81] their interstate and intrastate costs and expenses, the railroads contending that such items of expense were so inextricably bound together as to be impractical, if not impossible, of separation.

4. Section 13 proceedings were instituted by the railroads before the Interstate Commerce Commission; and pursuant thereto, the Interstate Commerce Commission, under its Docket No. 31484, entered into an investigation of Utah intrastate freight rates and charges. Commencing on May 20, 1954, a full and complete hearing was had before an Interstate Commerce Commission examiner, at which hearing a great amount of evidence, both oral and documentary, was introduced both by the railroads and by protestants who appeared, including the plaintiffs herein. After hearing and considering the same, the said examiner on March 11, 1955, issued a report and order in which he recommended to the Interstate Commerce Commission that it issue its order requiring that freight rates intrastate in Utah be raised as requested, with a few minor exceptions. The plaintiffs herein thereupon filed with the Interstate Commerce Commission their exceptions to the report and order as proposed by the examiner. Pursuant to request of the parties, oral arguments, with respect to said proposed order and said exceptions taken thereto, were heard before the Interstate Commerce Commission on July 11, 1955.

5. Under date of October 17, 1955, the Interstate Commerce Commission issued its report and order in said matter, wherein it found, with certain exceptions, that the Utah intrastate rates and charges were abnormally low; that conditions incident to intrastate transportation in Utah were not more favorable than those incident to interstate transportation in said state; that traffic thereunder failed to produce its fair share of earnings required to yield the railroads sufficient revenue to provide adequate and efficient railway transportation service to accomplish the purposes of the Interstate Commerce Act, and that Utah intrastate rates cast an undue burden upon interstate commerce. The Interstate Commerce Commission also found and ordered and directed that the undue burden and [fol. 82] unjust discrimination should be removed by applying to the Utah intrastate rates and charges on like intrastate traffic the percentage increases authorized on interstate traffic in Ex Parte 175, with the proviso "that increases may not be made in intrastate rates to levels higher than the interstate rates on like traffic to or from Utah for like or greater short line distances over the same lines of railroad, except in instances where the interstate rates, and not the intrastate rates, are designated as published to meet motor carrier competition."

6. Said order of the Interstate Commerce Commission further provided that the Utah Commission would be allowed thirty days to put said increases into effect; and unless the Utah Commission notified the Interstate Commerce Commission within the thirty days that it would authorize and permit such increases, that a further order would be issued by the Interstate Commerce Commission, putting said rates into effect.

7. Petition for rehearing was filed by plaintiffs and denied by the Interstate Commerce Commission.

8. The Utah Commission did not authorize the increases within the time provided in said order, nor within an authorized extension of said time; and under date of February 8, 1956, the Interstate Commerce Commission issued its further order, wherein the railroads were directed by

said Interstate Commerce Commission to put increased rates in effect in Utah pursuant to its order of October 17, 1955, and to publish and file its tariffs, and by such tariff issuance to make the 15 per cent increase effective on Utah intrastate freight rates as of March 13, 1956, upon one day's notice to the public and the Interstate Commerce Commission.

9. The present suit was brought by Public Service Commission of Utah and Utah Citizens Rate Association against United States of America and Interstate Commerce Commission under the provisions of Title 49, U.S.C.A., Section 17 (9) and Title 28, U.S.C.A., Sections 1336, 1398, 2284, 2321, 2322, 2323, 2324 and 2325 and pursuant [fol. 83] to Title 5, U.S.C.A., Section 1009, to enjoin, annul and set aside the report of the Interstate Commerce Commission dated October 17, 1955, and the order of the Interstate Commerce Commission dated February 8, 1956. The railroads operating in the State of Utah, who had been named as parties respondent in the Commission's proceedings in Docket No. 31484, intervened in the defense of the report and orders.

10. On March 9, 1956, the United States District Court for the District of Utah, both the Hon. Willis W. Ritter and the Hon. A. Sherman Christenson concurring therein, issued a temporary restraining order restraining the Interstate Commerce Commission and the intervening railroads from putting such increased rates into effect intrastate within the State of Utah pending hearing upon the merits before a full three-judge court. Prior to commencing trial on the merits on April 9, 1956, it was stipulated by all parties that such restraining order might remain in effect as an interlocutory injunction pending hearing and decision upon the merits, and it was so ordered by this Court.

11. A three-judge court was convened pursuant to statutory provisions (Title 28, Section 2284 and 2325). The record upon which the Commission's report and orders of October 17, 1955, and February 8, 1956, are based, was introduced in evidence and considered by the court in reaching its decision.

12. At the opening of the trial the plaintiffs offered to introduce in evidence the record of proceedings made before the Public Service Commission of Utah in the hearing held by it upon the railroad's request to increase intrastate freight rates, prior to the 13th Section hearing before the Interstate Commerce Commission. Defendants and intervenors objected to the introduction of such record as made before the Utah Commission, because no part thereof had been introduced in any of the proceedings had before the Interstate Commerce Commission in said 13th Section hearing. The Court reserved ruling upon the admissibility of the latter record, and the Court now finds from the record [fol. 84] as introduced before the Interstate Commerce Commission that no part of such proceedings before the Utah Commission were introduced or offered in evidence in the proceedings before the Interstate Commerce Commission, and the Court therefore finds that said record as made before the Utah Commission is irrelevant and not proper to be considered herein; and this Court in arriving at its conclusions herein has not considered the same.

13. The plaintiffs made no claim that the findings of the Interstate Commerce Commission did not support the conclusions of, and the orders as issued by the Interstate Commerce Commission. The plaintiffs asserted that the findings of the Interstate Commerce Commission were not supported by substantial evidence.

14. In finding that existing Utah intrastate rates cast an undue burden upon and discriminated against interstate commerce, the Interstate Commerce Commission did not rely entirely upon the disparity in rates. The evidence in the record shows that there is no distinction in the handling of interstate and intrastate freight shipments. They are both handled on the same trains and by the same crews; the same accounting department, the same traffic department and the same facilities are used in the dispatch and receipt of both shipments. The railroads' general need for additional revenue was established in Ex Parte 175. The evidence produced before the Interstate Commerce Commission in this case was that the earnings on investments of Utah railroads are below the national average.

The economic ability of Utah traffic to bear the 15 per cent increase found necessary in Ex Parte 175, was shown. The economic conditions in Utah in 1950 had improved greatly over the preceding period, both actually and relatively. Wages were higher than the national average; higher wages and costs of operation which the railroads had to pay in Utah and elsewhere, were shown; there had been a substantial increase in property investments of railroads operating within the state, while there was a decrease in net operating income. The cost of handling an intrastate shipment was shown to be as great, if not greater, than the [fol. 85] handling of interstate freight. The record shows that in 1952 the revenue per ton mile of railroads in the United States was 1.43¢; in the Western District, 1.393¢; and in the Mountain Pacific States, which includes Utah, 1.398¢ per ton mile; and in the State of Utah, on intrastate and interstate traffic, 1.258¢ per ton mile. The total annual loss to the railroads caused by the failure to grant the requested increase in Utah was estimated by both plaintiffs and defendants, including the intervening railroads, to be approximately $1,880,347.

15. The report and findings of the Interstate Commerce Commission herein (297 I.C.C. 87) is hereby adopted by reference and made a part of these findings of fact. The findings in that report and the orders entered thereunder are entirely proper and within the scope of the statutory authority of the Commission, and such findings of the Interstate Commerce Commission are adequately supported by substantial evidence.

16. Plaintiffs' contention that the order relating to the Utah intrastate rates is invalid because the flat percentage increase of 15 per cent in Ex Parte 175, with a saving clause, was contrary to law, is without merit and amounts to a collateral attack upon such Ex Parte 175 proceedings.

17. There is no basis in fact which would justify the granting of an injunction as prayed for.

From the foregoing findings of fact the Court make the following:

Conclusions of Law

1. This Court has jurisdiction to determine the lawfulness of the report and orders of the Interstate Commerce Commission here involved.

2. The Interstate Commerce Commission, in making such findings and report and orders as based thereon, was acting within the authority granted to it by the Congress of the United States in the Interstate Commerce Act as amended, and the orders of the Commission are not beyond its statutory powers in any respect, are not arbitrary and are not based on findings or conclusions which are erroneous [fol. 86] in any respect.

3. The validity of the Commission's order in Ex Parte 175 is not subject to a collateral attack herein.

4. The costs and expenses incident to the handling of intrastate and interstate traffic are intimately, if not inextricably, bound together; and it is not necessary that a separation be made between such costs and expenses as to interstate and intrastate traffic for the purposes of the Commission's investigation and the orders as entered by it herein.

5. The Commission's findings are adequate to support its order.

6. The findings, report and orders of the Interstate Commerce Commission are supported by substantial and probative evidence.

7. The Commission's report and order of October 17, 1955, and its orders dated January 9, 1956, and February 8, 1956, are valid in all respects.

8. The interlocutory injunction as granted upon stipulation of the parties on April 9, 1956, should be dissolved.

9. The complaint of plaintiffs should be dismissed with prejudice and at plaintiffs' costs.

Dated this 13 day of June 1956.

John C. Pickett, Circuit Judge.
Willis W. Ritter, District Judge.

[fol. 87] Received copy of foregoing Findings of Fact and Conclusions of Law this 12th day of June 1956.

E. R. Callister, by Raymond W. Gee, Attorney General of State of Utah.

Calvin L. Rampton, Keith E. Sohm, Attorneys for Plaintiffs, Per T. M.

A. Pratt Kesler, United States Attorney for District of Utah.

George W. Howard, Attorney for Interstate Commerce Commission. M. E.

[fol. 88] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

Civil Action No. C-8-56

PUBLIC SERVICE COMMISSION OF UTAH and UTAH CITIZENS RATE ASSOCIATION, Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants,

and

UNION PACIFIC RAILROAD COMPANY, THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, SOUTHERN PACIFIC COMPANY, THE WESTERN PACIFIC RAILROAD COMPANY, BAMBERGER RAILROAD COMPANY, THE OGDEN UNION RAILWAY AND DEPOT COMPANY, SALT LAKE-GARFIELD AND WESTERN RAILROAD COMPANY, TOOELE VALLEY RAILWAY COMPANY, and UTAH RAILWAY COMPANY, Intervenors.

FINAL DECREE—June 13, 1956

This cause came on regularly for hearing on April 9, 1956, before the Hon. John C. Pickett, Judge of the United

States Court of Appeals for the Tenth Circuit, and the Hon. Willis W. Ritter and the Hon. A. Sherman Christensen, District Judges of the United States District Court for the District of Utah, who constituted a special statutory three-judge court which was convened pursuant to the provisions of Title 28, U.S.C.A., Section 2325, upon a complaint brought by plaintiffs above named, to enjoin, annul and set aside a decision, report and orders of the Interstate Commerce Commission in a proceeding entitled "Utah Intrastate Freight Rates and Charges, Docket No. 31484" (297 I.C.C. 87); the matter was heard upon the evidence taken before the Interstate Commerce Commission and the report and orders of the Interstate Commerce Commission, as well as upon arguments and briefs of counsel for all parties; and the cause having been submitted for final decree, and the Court having made its findings of fact and conclusions of law, which are filed herewith,

[fol. 89] Now, Therefore, upon the basis of said findings of fact and conclusions of law, and for the reasons set forth by the majority opinion of the Court heretofore filed, it is, upon motion of counsel for the defendants and counsel for the intervening railroads,

Ordered, Adjudged and Decreed that the interlocutory injunction heretofore entered and granted in the above-entitled cause on April 9, 1956, be, and the same is set aside and dissolved. The request of plaintiffs for a permanent injunction and order annulling and setting aside the orders of the Interstate Commerce Commission is denied, and the plaintiffs' complaint is hereby dismissed with prejudice and with costs to be assessed against the plaintiffs.

Dated this 13 day of June 1956.

John C. Pickett, Circuit Judge, Willis W. Ritter, District Judge.

Received copy of foregoing Final Decree this 12th day of June 1956.

E. R. Callister, by Raymond W. Gee, Attorney General of State of Utah.

Calvin L. Rampton, Keith E. Sohm, per T. M., Attorneys for Plaintiffs.

A. Pratt Kesler, United States Attorney for District of Utah.

George W. Howard, Attorney for Interstate Commerce Commission. M. E.

Clerk's Note:

Notation of entry of Decree made in Civil docket on June 18, 1956, in accordance with Rule 79a of the Rules of Civil Procedure.

[fol. 90] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

PUBLIC SERVICE COMMISSION OF UTAH and UTAH CITIZENS RATE ASSOCIATION, Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants,

and

UNION PACIFIC RAILROAD COMPANY, THE DENVER AND RIO GRANDE WESTERN RAILWAY COMPANY, SOUTHERN PACIFIC COMPANY, THE WESTERN PACIFIC RAILROAD COMPANY, BAMBERGER RAILROAD COMPANY, THE OGDEN UNION RAILWAY AND DEPOT COMPANY, SALT LAKE-GARFIELD AND WESTERN RAILWAY COMPANY, TOOELE VALLEY RAILWAY COMPANY, and UTAH RAILWAY COMPANY, Intervenors.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed July 10, 1956

No. C-8-56

I. Notice is hereby given that Public Service Commission of Utah and Utah Citizens Rate Association, the plain-

tiffs above named, hereby appeal to the Supreme Court of the United States from the Final Decree denying the permanent injunction and order annulling and setting aside the Order of the Interstate Commerce Commission entered in this action on the 18th day of June, 1956.

This appeal is taken pursuant to the provisions of Title 28, U.S.C.A. Sec. 1253.

II. The clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. The Amended Complaint.

2. The Answer of Intervening defendants.

3. The Temporary Restraining Order.

4. The Answer of the United States of America and the Interstate Commerce Commission.

[fol. 91] 5. The Stipulation of March 19, 1956.

6. (a) The transcript of the proceedings before this Court on April 9, 1956.

(b) The following portions of Exhibits 2 and 2A:

(1) The transcript of testimony of the following witnesses:

Herman C. Kroll

Cross-examination of G. M. Watson, pages 95 to 104

Herman S. Jensen

R. K. Bradford

Robert Crandall

H. L. Balser

H. E. Colwell

T. E. Thaim

(2) The following Exhibits to Exhibits 2 and 2A:

Exhibit 1	Exhibit 65
Exhibit 2	Exhibit 66
Exhibit 37	Exhibit 74
Exhibit 38	Exhibit 75
Exhibit 64	Exhibit 76

(c) Exhibit 3
(d) Exhibits 4 and 4A
(e) Exhibit 5
(f) Exhibit 6

7. Opinion of Judges Pickett and Ritter.

8. Dissenting opinion of Judge Christenson.

9. Findings of Fact and Conclusions of Law.

10. Final Decree.

11. This Notice of Appeal.

III. The following questions are presented by this appeal:

1. Were the Report and Findings of the Interstate Commerce Commission, challenged in the above entitled case supported by substantial evidence.

2. Does the fact that interstate and intrastate freight shipments of the intervening railroads are handled by the same trains, by the same crews, by the same accounting department and the same traffic department, establish that all factors bearing upon the reasonableness of interstate and intrastate rates are the same.

3. May it be assumed, without evidence, that interstate and intrastate rates were in proper relationship before the increases granted in Ex Parte 175.

[fol. 92] 4. Does the evidence sustain the finding that the average revenue per ton mile on shipments within the State of Utah was lower than the revenue per ton mile in the western district and in the Mountain-Pacific states.

5. May the court sustain the Interstate Commerce Commission Order without further evidence on the following:

(a) The presumption that interstate and intrastate rates were in proper balance prior to the increases;

(b) The matter of common knowledge that intrastate and interstate traffic are intermingled on the same trains.

6. May the Interstate Commerce Commission and the Court ignore the evidence of the protestants which detracts from the weight of the evidence of the railroads.

7. May a collateral attack be made in this action upon the Interstate Commerce Commission Order in Ex Parte No. 175.

E. R. Callister, Attorney General for the State of Utah, By Raymond W. Gee, Deputy Attorney General, Attorneys for the Plaintiff, Public Service Commission of Utah.

Calvin L. Rampton, 721 Cont'l Bank Bldg., Salt Lake City, Utah, Attorney for Plaintiff, Utah Citizens Rate Association.

PROOF OF SERVICE (omitted in printing)

[fol. 94] UNDERTAKING ON APPEAL (omitted in printing)

[fol. 97] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION.

[Title omitted]

C8-56

TRANSCRIPT OF HEARING OF APRIL 9, 1956

Salt Lake City, Utah

Before:

The Honorable John C. Pickett, presiding.
The Honorable Willis W. Ritter, Chief Judge.
The Honorable Sherman Christenson, Judge.

[fol. 98] APPEARANCES:

For the Public Service Commission: Raymond W. Gee, Esq., Deputy Attorney General.

For the Utah Citizens Rate Assn.: Calvin L. Rampton, Esq.

For Union Pacific Railroad Company and Ogden Union Railway & Depot Co.: A. U. Miner, Esq., and W. H. Fitzpatrick, Esq.

For Denver & Rio Grande and Tooele Valley Railway: S. N. Cornwall, Esq.

For Southern Pacific Company: Albert Bowen, Esq.

For Western Pacific Railroad Co.: Peter W. Billings, Esq.

For the Interstate Commerce Commission: Charles H. Johns, Esq., Assistant General Counsel.

For the United States of America: A. Pratt Kesler, Esq., United States Attorney.

[fol. 99] April 9, 1956

(Plaintiff's Exhibits 1 through 6 were thereupon marked for identification.)

COLLOQUY BETWEEN COURT AND COUNSEL

Judge Pickett: Case No. C 8-56, Public Service Commission of Utah v. United States and Interstate Commerce Commission. Are the parties ready?

Mr. Rampton: The plaintiff is ready.

Mr. Miner: The intervenors are ready.

Mr. Kesler: Ready. If the Court please, I would like to introduce at this time Mr. Charles H. Johns, Assistant General Counsel, Interstate Commerce Commission, and member of the Bar of Washington, D. C. and also a member of the Bar of the Supreme Court of the United States, and move his admission for the purpose of this case at this time.

Judge Pickett: He will be so admitted.

Mr. Miner: And may it please the Court, I would like to introduce Mr. W. H. Fitzpatrick, of Omaha, Nebraska, who is a member of the Bar of the Supreme Court of the state of Missouri and the state of Kansas, of the Federal Court in the state of Missouri where he was admitted in 1920, and he has practiced since; also in the state of Kansas in Federal Court, Supreme Courts of Missouri, Kansas,

and Wyoming, and I would like to move his admission for the purpose of this case as co-counsel.

Judge Pickett: Whom does he represent?

Mr. Miner: As co-counsel for the intervening railroads. [fol. 100] Mr. Rampton: May we proceed, your Honor?

Judge Pickett: You may proceed.

Mr. Rampton: If the Court please, it was stipulated at the time of the argument on the motion for a temporary restraining order that the plaintiffs' motion for an interlocutory injunction might be heard at the same time as the case was heard on its merits. Last night counsel for the railroads called me and told me that they were willing to stipulate that the temporary restraining order be entered to hold the matter in status quo while the case is being considered by this commission. Is that right?

Mr. Miner: We so stipulate.

Judge Pickett: In other words, the restraining order will remain in effect until final disposition.

Mr. Miner: Yes, we assume it is the type of case the Court will not delay at all, and we are so willing to stipulate.

Judge Pickett: Any objection to that?

Judge Ritter: No, not at all. I think that is desirable.

Mr. Kesler: I might say the United States and the Interstate Commerce Commission join in that stipulation.

Judge Pickett: It may be so ordered.

Mr. Rampton: Of course, I will produce no evidence [fol. 101] on the temporary restraining injunction.

Offers in Evidence

At this time I would like to introduce in evidence Exhibits 1 to 16, inclusive, for the plaintiff, the certified record of case No. 3669 before the Public Service Commission of the State of Utah. It is in seven volumes. Case No. 3669 is the number assigned to the case before the Public Service Commission of the State of Utah, where increases here in issue were sought before the State Commission.

Judge Pickett: Now, Mr. Counsel, I don't know a thing about this case myself. The other judges, I guess, have heard preliminary matter and, unless it is agreeable to opposing counsel, I wouldn't myself have any idea of what reference it had to the case.

Mr. Rampton: May I make just a short statement, then, at this time as to how the case arose, without touching on the merits of it.

This action is brought on behalf of the Public Service Commission of Utah and the Utah Citizens Rate Association, a group of large shippers within the state of Utah, to annul and set aside an order of the Interstate Commerce Commission raising intrastate rates within the state of Utah by fifteen percent, under the provisions of Section 13, Sub-Section 4, of the Interstate Commerce Act.

Now, the background leading up to the case is this, your Honor: In 1950 the Class One Railroads of the United [fol. 102] States made application to the Interstate Commerce Commission to increase the interstate rail rates throughout the country. There were three separate orders entered in that 1951 case which will be mentioned throughout this as Exparte 175. In the Exparte 175 case the Interstate Commerce Commission first entered an order, as I recall in 1951, which increased all rail rates in the country interstate by two percent.

Then there was a second order issued in the same case sometime later, I believe, in the same year, that authorized the railroads in the West and the South to take an additional four percent increase on their interstate rates, and the Eastern railroads to taken an additional seven percent; and then in the third and final order entered in that Exparte 175, the Eastern railroads were authorized to take an additional nine percent, and the Western and Southern railroads an additional six percent; so that in this one proceeding, Exparte 175, the interstate rates were raised, with certain exceptions that aren't material here, by a total of fifteen percent.

Judge Pickett: And that was after a full hearing before the Interstate Commerce Commission.

Mr. Rampton: That is right, on the interstate rates.

The railroads about the same time made application to the Public Service Commission of the state of Utah to increase the intrastate rates by the same amount they were [fol. 103] asking to increase the interstate rate before the Interstate Commerce Commission.

That proceeding before the Public Service Commission of Utah was assigned case No. 3669. That is the record

I am offering here. The first petition in that case before the Public Service Commission was heard back in I believe 1951, and at that time after——

Judge Pickett: That is part of this record here?

Mr. Rampton: Yes, sir. At that time, after a day's hearing and after the railroads rested, the Public Service Commission of Utah ruled that the railroads had not introduced any evidence which would enable them to weigh the level of intrastate rates to see whether they should be raised or not, and gave the railroads a sixty-day continuance to get the needed information.

The railroads never furnished it. Then, at the time the second increase was granted nationally in the second order in Exparte 175, the railroads again filed a petition with the Public Service Commission of Utah for the second increase of four percent.

Now that was never heard, that second one, but at the time of the final order in Exparte 175 nationally, the railroads filed a third petition asking the whole fifteen percent to be made applicable to Utah intrastate rates.

Judge Pickett: That application was before the Public [fol. 104] Service Commission of Utah?

Mr. Rampton: Yes, sir. Now, that and the two preceding applications were all put in the same case number, that is case No. 3669.

Now, on this third application there was a two or three day hearing held before the Public Service Commission of Utah; and that record, together with all of the exhibits, is included in this exhibit which I am offering here.

After that hearing, the Public Service Commission of Utah once again ruled that the railroads had failed to introduce any evidence that shed any light on the adequacy of intrastate rates and held that they would not enter an order, but denied the order temporarily—denied the petition without prejudice to the rights of the railroads to come in and move to reopen if they could get the kind of evidence the Public Service Commission thought they should have.

They didn't come again before the Public Service Commission of Utah nor did they appeal that order to the Supreme Court of the state of Utah. Instead, the railroads

went before the Interstate Commerce Commission with a petition under Section 13 of the Interstate Commerce Act, which authorizes the Interstate Commerce Commission to take jurisdiction of, and raise intrastate rates under very restricted circumstances.

The Interstate Commerce Commission had a hearing on [fol. 105] this Section 13 petition and they did order the rates to be raised intrastate in Utah by fifteen percent to correspond with the raise nationally.

The first report in that matter was entered last October. We filed a petition for rehearing. The petition for rehearing was denied. We then brought this action. After we brought the action, the Interstate Commerce Commission entered its order requiring the railroads to put the rates into effect.

We filed our amended complaint at that time, and the case is here on that basis, seeking to set aside the report and order increasing the Utah intrastate rates.

Now, the exhibit, No. 1 through 16, is a complete record of the case as it progressed before the Public Service Commission of the state of Utah.

Mr. Miner: May I be heard in connection with the offer?

Judge Pickett: You may.

Mr. Miner: The record which counsel proposes to offer here as an exhibit is a record before the Utah Commission. It was not introduced at all in the hearing before the Interstate Commerce Commission. This is a review of the proceedings before the Interstate Commerce Commission and not a review of what happened before the Public Service Commission of Utah.

[fol. 106] They were not denied the right to introduce any part of that that they may have desired to introduce before the Interstate Commerce Commission.

He mentioned the fact that no appeal was taken to the Supreme Court of the State of Utah. In none of these 13 Section cases before the Interstate Commerce Commission has there been any appeal to any Supreme Court, save in one instance, in the state of Montana. Montana denied the increases in a former Exparte 168. It was appealed to the Supreme Court of Montana, which sustained the denial. At that time the King Case, which we will later

refer to, was in the Supreme Court of the United States, and the Attorney General in Montana appeared. When the King case was decided upholding the order, it was determined to go along on the Montana rates, and they were put in effect. That is the only time there has been an appeal to the Supreme Court. There is no requirement that there should be an appeal to the Supreme Court. It is not a review by any means of what was done before the Public Service Commission of Utah; and the Supreme Court of the United States has stated very definitely on many occasions that the Court here is to review only what happened before the Interstate Commerce Commission, because the Interstate Commerce Commission's order is in question, and can review only what was put before it to determine whether that order was right or not, and no extraneous [fol. 107] matter at all can be introduced in these hearings.

Judge Pickett: I take it you object to the admission of these.

Mr. Miner: We do, and I have several United States Supreme Court cases with respect to it. I would like to read one of those.

Judge Pickett: Before you go into that, I would like to ask counsel for the Public Service Commission the purpose of the exhibit?

Mr. Rampton: In a case on which we are relying very strongly in this matter, your Honor, a recent case decided in Mississippi——

Judge Pickett: Before you get to it, we have here a case, as I understand it, questioning the procedure before the Interstate Commerce Commission.

Mr. Rampton: That is right.

Judge Pickett: What is the purpose of introducing the record in another hearing before the Public Service Commission of Utah?

Mr. Rampton: Because in a Section 13 case, such as this is, when the Courts have reviewed the holding of the Interstate Commerce Commission, the Courts have considered and laid weight upon whether or not the matter was actually considered fully in the state Courts or in the state procedure before it got before the Interstate Commerce Commission.

[fol. 108] As stated in the Mississippi case, the Court there, the three-judge Court laid great weight upon the fact that the Mississippi Commission had considered the rates and found there should be no increase.

Judge Pickett: Let me ask you this: I am trying to get at the materiality of it. Assume there had been an appeal taken to the Supreme Court of the state of Utah.

Mr. Rampton: Yes.

Judge Pickett: And it had upheld the action of the Public Service Commission.

Mr. Rampton: Yes.

Judge Pickett: Would that have any effect on the proceedings before the I.C.C.?

Mr. Hampton: Yes, I think it would have this effect, your Honor: We go before the I.C.C. after the Public Service Commission has rendered a decision with the same presumption that, presumably, the railroads come here. That is, the earlier decision was right.

Judge Pickett: Do you claim they are bound by it?

Mr. Rampton: No, they are not bound by it, but it is something they should consider, something the Interstate Commerce Commission should consider, the fact as to whether or not the State Body has carefully considered and passed upon this matter, or has just passed over it. We say that the Interstate Commerce Commission should have considered that.

[fol. 109] Judge Ritter: Well, did you offer to introduce it there?

Mr. Rampton: In the Interstate Commerce Commission, not the record itself, but the ultimate holding of the Utah Commission.

Judge Ritter: Well, how can you complain about the Interstate Commerce Commission not having considered this record when you appeared in the Interstate Commerce Commission proceeding and made no proffer of it?

Mr. Rampton: We made a proffer of the final decision in the case.

Judge Ritter: But that is not what you want to introduce here.

Mr. Rampton: No, I would like to introduce the whole

thing, principally because the position has been taken by the Government here—they attempt to distinguish our case from the Mississippi case because they say in the Mississippi case the State Commission had already given the matter of the rates great consideration, and they say in the Utah case they didn't give it consideration.

Judge Pickett: Is the Mississippi case a Federal case?

Mr. Rampton: Yes, sir, it is a case that was decided by a three-judge court in Mississippi setting aside the order of the Interstate Commerce Commission; it was appealed [fol. 110] to the Supreme Court of the United States and the holding was sustained.

On page 31 of the brief which you have and which I just saw less than thirty minutes ago for the first time, counsel for the Government, the Interstate Commerce Commission, attempts to distinguish this case from the Mississippi case. He says in this case the court will be unable to find that the Utah Commission gave great study to the problem before it, which was one of the things upon which the stress was laid in the Mississippi case.

Now, I have alleged in my complaint, your Honor, that they did give great study to it, that they are the body in the best position to weigh these rates. They have denied they gave great study to it. This goes to the issue as to whether or not the matter was thoroughly and fully considered by the Public Service Commission of Utah before the matter came to the Interstate Commerce Commission.

Judge Pickett: Do you think we could consider it in examining the action of the I.C.C. when the I.C.C. didn't have it before it?

Mr. Rampton: Yes, when that becomes an issue in this case. When I allege in this case in my complaint that full consideration was given to this matter by the Public Service Commission of the state of Utah, which I allege is the body that is most familiar with those rates, when it is [fol. 111] denied that that is so, I think I should be given an opportunity to show the magnitude of those proceedings before the State Commission.

Judge Ritter: Well, isn't the only issue here the validity of the order of the Interstate Commerce Commission?

Mr. Rampton: That is right, your Honor. This is background for that, however.

Judge Ritter: How can we consider anything in determining that question except those matters which the I.C.C. based it upon? How can you determine the validity of the Interstate Commerce Commission order except on the basis of the record before it?

Mr. Rampton: Well, I feel that this is background of that record.

Judge Ritter: Well, if it is immaterial background——

Mr. Rampton: Well, I don't feel it is immaterial in view of the position that has been taken. I think we have joined that issue in the record in this case.

Judge Pickett: Just a moment.

Judge Christenson: In the Mississippi case was the record before the State Agency introduced in evidence before the Interstate Commerce Commission?

Mr. Rampton: There is no indication in the decision.

Judge Christenson: One way or another?

Mr. Johns: May I answer that, sir?

[fol. 112] Judge Christenson: Yes.

Mr. Johns: The record in the State proceedings would not be in any Commission proceeding. It is irrelevant because we don't review State action.

Judge Christenson: But Judge Mize did consider the record before the State Commission.

Mr. Johns: He considered the report that the State Commission put out, weighed one report against the other.

Mr. Rampton: There is no record of whether he took the record into evidence or not.

Mr. Johns: That is true.

Judge Pickett: Well, in considering the matter, we think that the proffer has been made and we will reserve the matter of whether it should become part of the record, and it will be available to us for consideration in reaching a conclusion of whether or not it should become part of the record. Is there any objection to that?

Mr. Miner: In that connection may I refer to one or two of these cases that bear on it.

Judge Pickett: Wouldn't they be part of your brief?

Mr. Miner: No, they are not, because we had no idea he was going to offer this record until just a day or two ago.

Judge Pickett: Well, I suggest that you submit them with your brief and then we can study them at the same [fol. 113] time we attempt to reach a conclusion in the case.

Mr. Miner: Well, we will have to submit a supplemental memorandum with respect to them.

Judge Pickett: Submit the cases and we will know what they are and we can read them.

Mr. Miner: Well, I can do that.

Judge Pickett: Most certainly he is entitled to make a record with this offer.

Mr. Miner: Yes.

Judge Pickett: We may conclude that they are not properly part of the record and not for us to consider and finally reject the offer.

Mr. Miner: The cases, too, very definitely hold that this is a review of what was before the Commission only.

Judge Pickett: If the authorities are submitted, you may submit your reasons and authorities for the admission of the exhibit.

Mr. Rampton: All right. I offer in evidence at this time as Exhibits 2 and 2A the record of the proceedings in this case No. 31484 before the Interstate Commerce Commission. It is bound in two volumes. The first volume contains the transcript of the evidence and part of the exhibits. The second volume contains the balance of the exhibits, and attached to each is a certificate from the Secretary of the Interstate Commerce Commission certifying that that is the [fol. 114] complete record.

Mr. Johns: No objection to that.

Mr. Miner: We have no objection. We assume the certificates would bear the validity to indicate they are the proper records.

Judge Pickett: It may be received.

(Plaintiff's Exhibits 2 and 2A were thereupon received in evidence.)

Mr. Rampton: I offer in evidence as plaintiff's Exhibit 3 the report of the Interstate Commerce Commission in

Docket No. 31484 entered on the 17th day of October, 1955. That is also certified to by the secretary of the Commission.

Mr. Johns: No objection to that offer. I might point out, however, that I have handed up to each member of the Court the printed copy of that exhibit, and my brief is keyed to the printed copy rather than the mimeographed copy.

Judge Pickett: It will be received.

(Plaintiff's Exhibit 3 was thereupon received in evidence.)

Mr. Rampton: I offer in evidence——

Judge Ritter. Are you offering a mimeographed copy as your exhibit?

Mr. Rampton: Yes, sir.

Judge Ritter: It might be well for the record, to offer the printed copy so that the briefs will be tied into something that is in evidence.

[fol. 115] Mr. Rampton: I have no objection, your Honor. I offered this because it is the certified copy of the secretary, but I have no objection to having a printed copy, if you have an extra copy.

Mr. Johns: No, I don't. I handed up three. I might say the Court might take judicial notice of the opinions of the Commission. They are in printed form, and I don't see that it is absolutely necessary to offer the report as an exhibit.

Mr. Rampton: I have no objection to substituting a printed copy of this, your Honor.

I offer in evidence as plaintiff's Exhibit No. 4 the petition for reconsideration and rehearing in Docket No. 31484 filed with the Interstate Commerce Commission on behalf of the Utah Citizens Rate Association and the Public Service Commission of Utah.

Mr. Johns: It is not certified but there is no objection to it. I have seen the original and that appears to be a true copy of the original.

Mr. Miner: We made a reply to that petition for rehearing and it may be proper, if that is introduced, the

reply should be. We have no objection really to the petition as such.

Judge Pickett: Isn't the reply part of the record?

Mr. Rampton: I think not, your Honor. This record, [fol. 116] as I have it here, doesn't contain anything beyond the date of the report and order.

Judge Pickett: Do you desire that a copy of the reply be introduced in evidence?

Mr. Miner: We think that if the petition for rehearing is introduced, the reply should be.

Mr. Rampton: I have no objection.

Judge Pickett: I think that is proper.

Mr. Miner: We have separate copies for each member of the Court.

Mr. Rampton: How would the Court want that numbered?

Judge Ritter: Have the clerk number them regularly.

Judge Pickett: Attach it as part of that other exhibit.

Judge Ritter: Do you want to offer the reply as your exhibit?

Mr. Rampton: I might just as well. May we mark it 4A, your Honor?

Judge Ritter: Yes.

(Plaintiff's Exhibit No. 4A was thereupon marked for identification.)

Mr. Rampton: I offer in evidence as Exhibit 5 an order of the Interstate Commerce Commission dated the 9th day of January, 1956 denying the petition for rehearing.

[fol. 117] Mr. Johns: No objection.

Mr. Miner: No objection to that.

Judge Pickett: It may be received.

(Plaintiff's Exhibit No. 5 was thereupon received in evidence.)

Mr. Rampton: I offer in evidence as plaintiff's Exhibit 6 an order of the Interstate Commerce Commission dated the 8th day of February, 1956 in Case No. 31484 ordering and authorizing the railroads to increase their intrastate rates within the state of Utah by fifteen percent, with certain restrictive hold-downs.

Mr. Johns: No objection.

Mr. Miner: No objection after the final order is in.

Mr. Rampton: That is all the evidence I have to offer your Honor.

Mr. Miner: Now, except for the reply that we have—we stated in the brief that we have heretofore tendered to the members of the Court that at the opening of the hearing we would give to the Court copies of the brief which was filed with the Commission at the time and prior to the oral argument before the Commission. We did not serve this on opposing parties. Copies of it were served on opposing parties at the time it was filed and prior to the oral argument before the Commission. We have not been able to "rake up" any additional copies, but we do have three additional copies we would like to tender for whatever benefit [fol. 118] the Court would get from them.

Judge Pickett: Those will not be part of the record?

Mr. Miner: No, that will not be an exhibit nor part of the record.

Mr. Rampton: I would like to say this in regard to that, if the Court please: I have no objection, of course, to submitting anything to the Court, but I should be able to see it. If I ever saw that document, it was two years ago.

Judge Ritter: Mr. Clerk, would you hand this to Mr. Rampton.

Mr. Rampton: I do ask for an opportunity to look over it and ten days to reply to it, if there is anything that needs replying to.

Judge Pickett: I assume the same question was before the Interstate Commerce Commission that would be here.

Mr. Johns: Yes, sir. The only thing is this is a brief that was filed in this case and all parties, including Mr. Rampton's firm, replied to this brief, so I don't see why he needs any time to look it over.

Mr. Rampton: I have no record of receiving——

Judge Pickett: Did you file a brief before the Interstate Commerce Commission?

Mr. Rampton: I did, your Honor, but not in response to this.

[fol. 119] Mr. Johns: That is correct. I withdraw that. They filed briefs simultaneously.

Mr. Rampton: The brief I responded to is this brief (indicating). I have no recollection of having seen this document before in my life. Here is the railroads brief to which I filed a reply.

Mr. Miner: If the Court please, at the conclusion of the hearing the examiner asked if parties wanted to file briefs. Page 384 of the transcript, which was the record, shows that Mr. Fitzpatrick said, "As far as we are concerned, we don't care whether we do."

Mr. Rampton said, "We do want to file a brief."

So we said we would have to, and the examiner set July 12 as the date for the filing of simultaneous briefs. We have the receipt showing the briefs were mailed to Mr. Rampton, to the head office, Citizens Rate Association, Mr. H. H. Ellsworth, to the Mining Association, and others, and also to the State Public Service Commission, and we even have a letter from Mr. Sohm of the Public Service Commission acknowledging receipt of it.

Mr. Rampton: As I say, your Honor, if they say they mailed it to me, they no doubt did, but, if so, if I saw it, it was two years ago, and I haven't seen it since that time, if I saw it then.

[fol. 120] Judge Pickett: The Court has concluded if you find anything in it that you think you haven't covered, you may reply to it, if you do it immediately.

Mr. Rampton: May I also state this, your Honor: While we are on the same subject, the brief of the Interstate Commerce Commission was just given to me about thirty minutes before, and I have not had an opportunity to read that. May the order also apply to that, if there is anything in there I don't feel I have covered in argument?

Judge Ritter: We ought to have an end to this brief filing at some time or other. I understood you had both filed briefs in this matter already.

Mr. Miner: All three parties have.

Mr. Rampton: Yes, but the railroads and plaintiffs exchanged their briefs some time ago. The Interstate Commerce Commission handed theirs in this morning for the first time.

Mr. Johns: I have not yet been served with a brief from the plaintiffs in this case.

Mr. Rampton: Well, your co-counsel has, sir.

Mr. Johns: I understand there was a brief filed with the local office, and it may be in the mail to Washington now, but I haven't received a copy. I will say I did read a copy yesterday and I know what Mr. Rampton said there. But so far as being served a brief, I haven't received his [fol. 121] brief yet.

Mr. Rampton: But you haven't been a party to this case until this morning, Mr. Johns.

Judge Pickett: If either of you find anything you want to reply to, you might do so within ten days.

Mr. Rampton: Thank you, your Honor.

Mr. Miner: That is all we have, if the Court please.

Judge Pickett: Does that complete the record?

Mr. Rampton: Yes, sir.

(Argument by Counsel.)

CERTIFICATE

I, Lucille Hallam, Official Reporter, United States District Court, District of Utah, hereby certify that the foregoing is a true and correct transcript of proceedings had in the above-entitled matter.

Dated June 22, 1956

Lucille Hallam, Official Reporter.

[fol. 122] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

ORDER AS TO EXHIBITS—July 25, 1956

Upon the request of the appellants and good cause appearing therefor;

It is hereby ordered that the originals of Exhibits 2 and 2A in the above entitled case, shall be forwarded to the Supreme Court of the United States by the Clerk of this Court as part of the record on appeal in lieu of copies thereof.

It is further ordered that said original papers shall be forwarded to the Clerk of the Supreme Court of the United States via registered mail, insured, and upon disposition of this matter by the Supreme Court of the United States the originals of said Exhibits 2 and 2A shall be returned to the Clerk of this Court by the Clerk of the Supreme Court of the United States in the same manner.

Dated this 25 day of July, 1956.

John C. Pickett, Circuit Judge

Copy

[fol. 123] PLAINTIFFS' EXHIBIT NO. 3

27283

INTERSTATE COMMERCE COMMISSION

No. 31484

UTAH INTRASTATE FREIGHT RATES AND CHARGES

Decided October 17, 1955

Utah intrastate rates and charges, except on sugar beets, beet-sugar final molasses, and certain rates on coal, sheep, and cattle, found to cause unjust discrimination against interstate commerce. Basis for the removal thereof prescribed.

W. H. Fitzpatrick, A. U. Miner, T. K. Earley, Albert R. Bowen, L. W. Hobbs, E. L. Van Dellen, and *T. R. Woodrow* for respondents.

Waldo A. Gillette for a shipper supporting respondents.

F. A. Yeamans and *Keith E. Sohn* for Public Service Commission of Utah, protestant.

Calvin L. Rampton, H. H. Ellsworth, B. P. Manley, T. C. Taylor, and *Miles P. Romney* for protestants.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions to the report proposed by the examiner were filed by the Public Service Commission of Utah, the Utah Citizens Rate Association, the Utah Coal Operators Association, and the Ideal Cement Company, and the respondents replied. The parties were heard in oral argument. Exceptions and requested findings not discussed in this report nor reflected in our findings or conclusions have been considered and found not justified.

This proceeding is an investigation under section 13 of the Interstate Commerce Act into the lawfulness of Utah intrastate freight rates and charges.[1] Responsive to a petition filed by the principal railroads serving Utah,[2] we entered upon this investigation for the purpose of determining whether the rates and charges of the common carriers by railroad operating in Utah, or any of them, for the intrastate transportation of property, made or imposed by authority of the State of Utah, cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce, on the one

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hand, and interstate or foreign commerce, on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, and, if so, what rates and charges, or what maximum or minimum, or maximum and minimum, rates and charges shall be prescribed to remove any unlawfulness found to exist.

All common carriers by railroad operating in Utah which are subject to the Commission's jurisdiction were made re-

[1] Rates and rate differences stated herein are in amounts per 100 pounds, unless otherwise specified.

[2] The Denver and Rio Grande Western Railroad Company, Union Pacific Railroad Company, Southern Pacific Company, The Western Pacific Railroad Company, Utah Railway Company, Carbon County Railway Company, Bamberger Railroad Company, Tooele Valley Railway Company, Salt Lake, Garfield and Western Railway Company, and Ogden Union Railway and Depot Company. These carriers will be referred to by their short titles, or collectively as the respondents.

spondents. Copies of the order of investigation and notice of hearing were served upon each of them and upon the State of Utah.

In *Increased Freight Rates, 1951*, 280 I. C. C. 179, decided March 12, 1951, hereinafter referred to as Ex Parte No. 175, we authorized interim general increases, among others, of 2 percent in all basic interstate rates and charges, with a few exceptions, in western territory within which the State of Utah is located, subject to maximum increases on certain commodities. Such increase became effective generally on April 4, 1951, on interstate traffic. In the second Ex Parte No. 175 proceeding, 281 I. C. C. 557, decided August 2, 1951, the respondents were authorized to increase such interstate rates and charges 6 percent in lieu of the amount previously authorized, such increase to be applied as a surcharge to the amount of the total freight charge shown on the freight bill. This increase became effective generally on August 28, 1951, on interestate traffic, and was subject to an expiration date of February 28, 1953. In the third Ex Parte No. 175 proceeding, 284 I. C. C. 589, decided April 11, 1952, the surcharge previously authorized was increased to 15 percent, subject also to certain exceptions in which lesser percentages were authoried on certain commodities, and subject also to certain maximum increases, with an expiration date of February 28, 1954. The expiration date has been extended to December 31, 1955, by order entered July 29, 1953, 289 I. C. C. 395. The latter increases became effective generally on interstate traffic on May 2, 1952.

By petitions filed in June 1951, November 1952, and September 1953, the respondents requested the Utah commission to authorize increases in the intrastate rates and charges corresponding to those authorized in the three Ex Parte No. 175 proceedings. Hearings were held on these petitions in October 1951 and November and December 1953. By order of December 14, 1953, the Utah commission dismissed the petitions on the ground that the railroads had failed to produce evidence concerning their intrastate operations as required by Utah law. None of the increases authorized in the various Ex Parte No. 175 proceedings has been made applicable on intrastate traffic. The respondents

now seek to make the final Ex Parte No. 175 increases (15 percent, subject to the stated exceptions and maxima)

[fol. 123b] Utah Intrastate Freight Rates and Charges 89

in all intrastate rates and charges, except those applying on sugar beets and beet-sugar final molasses moving to sugar factories.

In *Utah Intrastate Freight Rates and Charges*, 287 I. C. C. 315, decided December 1, 1952, the respondents asked that we require the Utah commission to authorize them to increase the intrastate rates and charges corresponding to the interstate increases authorized in Ex Parte No. 162, 266 I. C. C. 537; Ex Parte No. 166, 270 I. C. C. 93, and 270 I. C. C. 403, and Ex Parte No. 168, 276 I. C. C. 9, which increases had been withheld in whole or in part by the Utah commission. Therein, we found that such increases in the intrastate rates and charges should be permitted, and the Utah commission, by order dated March 18, 1953, authorized respondents to increase their intrastate rates and charges to reflect the interstate increases authorized through and including Ex Parte No. 168. These increases did not become effective on intrastate traffic until May 1, 1953, or a year after authorization of the third increase in Ex Parte No. 175, above referred to, became effective on interstate traffic. The respondents estimate that they are being deprived of approximately $1,880,000 annually as a result of the failure of the Utah commission to permit the increases here sought.

In *Utah Intrastate Freight Rates and Charges, supra*, at pages 321-322 it is shown by various indexes or measures that the Utah economic conditions in 1950 had improved greatly since the period 1935-39, both actually and relatively. The present record reflects such conditions as of 1952, the progress since 1950 having been generally equal to or better than in the western district or nationally. For example, the income payment per capita in 1950 was $1,270 in Utah, $1,456 in the western district, and $1,440 in the entire United States. In 1952 the respective amounts were $1,450, $1,661, and $1,639. In population, Utah has shown a growth of 36 percent from 1939 to 1952, as compared with a growth of 23 percent in the western district and 19 percent in the United States as a whole.

The net property investment for the several systems of class I railroads[3] serving Utah in road and equipment used in transportation service, plus cash, material, and supplies, less recorded depreciation and amortization, as shown by their books at the end of the years indicated, rose from $2.6 billion in 1950 to $2.8 billion in 1953.[4] Net railway operating income of these five railroads was $62.4 million in 1949, $110.9 million in 1950, and decreased to $97.7 million in 1953. Rates of return on net investment for the years 1949 to 1953 were 2.58, 4.33, 3.66, 3.91, and 3.44 percent, re-

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spectively.[5] Their net income increased progressively from $72.7 million in 1949 to $136 million in 1953. The foregoing information covers the indicated class I railroad systems as a whole. The operating ratio was 71.35 percent in 1950 and 75.21 percent in 1953.

The average number of employees of the five class I respondents was 127,369 in 1950. In 1953 it was 133,013, an increase of 5,644. The average straight-time hourly rate of pay of these employees increased from $1.581 in 1950 to $1.898 in 1953. The total operating expenses increased from $750.9 million in 1950 to $918.6 million in 1953. The principal increases in these expenses are those in wages, material, and supplies which constitute 90 percent of the operating expenses. The average unit prices of the latter, other than fuel, in January 1954 had increased 24.7 percent over July 1949, while the increase in the expenditures for fuel, the weighted average of both coal and oil, was 13.7 percent. Expense figures for 1953, referred to above, do not include a wage increase amounting to 5 cents an hour

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[3] Embracing the Denver & Rio Grande Western, Southern Pacific, Union Pacific, Utah Railway, and Western Pacific. The Bamberger has been omitted although it is no longer an electric railroad, and its operating revenues exceed $1 million annually.

[4] Figures herein for 1953 include those of several small leased lines of the Southern Pacific not previously indicated in the accounts.

[5] The 1953 net railway operating income makes allowance for $10.9 million paid by the Union Pacific on nonutility income (gas and oil). If that amount were added to net railway operating income of the five roads, the rate of return for 1953 would be increased from 3.44 percent to 3.82 percent.

and increased vacation benefits granted to operating employees in that year. Also, a cost-of-living adjustment was made in the nonoperating wage scale which increased the carriers' payroll costs.

Indicative of the increase in operating efficiency of the class I railroads serving Utah are the various operating statistics for all class I railroads in the western district, 1952 compared with 1949, as shown below:

	1949	1952
Net ton-miles per serviceable freight car-day	1,008	1,049
Net tons per loaded car	29.3	30.2
Freight train load (tons)	1,075	1,213
Freight train speed (m. p. h.)	17.9	19
Gross ton-miles per freight train-hour (excluding locomotive and tender)	44,518	52,066
Freight locomotive-miles per active locomotive-day	124.2	137.2

To a great degree, the increased efficiency is attributed to substantial expenditures for capital improvements, including the purchase and use of larger freight cars and diesel locomotives.

The revenue per ton-mile in 1952 on all traffic (interstate and intrastate) in Utah was 1.258 cents, in the mountain-Pacific States[6] 1.398 cents, in the western district 1.393 cents, and in the entire United States 1.43 cents, representing respective increases over the 1939 base period of 29, 37, 36, and 47 percent.

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The Bamberger, classified as an electric railway but operated by diesel power, since September 1952, has 37 miles of main-line track between Salt Lake City and Ogden, Utah. It is the principal respondent here seeking the Ex Parte No. 175 increases which operates wholly within the State. In 1953, the Bamberger originated 95,986 tons of revenue freight and received 245,773 tons from connections for delivery on its line. From this traffic it derived net railway operating income (after State and Federal taxes) of $134,191, which resulted in a rate of return of 15.98 percent on a depreciated rate base of $841,492. On brief, the Utah commission argues that the Bamberger's rate of return is

[6] Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

a clear indication that carriers operating in Utah are faring well financially and that the comparatively low 3.82-percent return in 1953 of the five class I systems should not be attributed to the lack of the Ex Parte No. 175 increases on their Utah intrastate traffic. The Bamberger has no passenger operations, and it is the only railroad serving Hill Air Force Base. The seeming prosperity of the Bamberger does not prove that the other lines operating in Utah do not require additional revenue.

For the most part, intrastate traffic handled within Utah and interstate traffic to or through points in that State are handled in the same trains by the same crews and other employees, and through the same yards and other facilities. No distinction is made between intrastate and interstate traffic in the loading, unloading, and line-haul movement. The one minor exception is that traffic moved in so-called "piggyback" service is confined to interstate movements. Certain protestants also stress the fact that products of mines, which make up about 80 percent of the carloads of intrastate traffic, move in gondola cars at unit costs lower than that of traffic moved in other types of equipment.

Coal.—During May, August, and November, 1953, and February 1954, there were 11,466 carloads of coal moved intrastate in Utah, compared with 3,551 carloads moved interstate to points in Utah. The total charges collected by the Utah railroads on the 11,466 carloads moved intrastate amounted to $1,636,459, which would have been $1,827,325, or $190,866 more, if the increases sought had been in effect. Expanded to a full year, this indicates that in the 12 months April 1, 1953, to March 31, 1954, the respondents lost approximately $572,598 in revenue on Utah coal moving intrastate, because the Utah commission refused to permit the same rate increases authorized in interstate coal rates in Ex Parte No. 175. The Ex Parte No. 175 increase on coal and coke is 12 percent, subject to a maximum of 40 cents per net ton.

The following table shows per net ton, the intrastate rates on coal from Castle Gate, Utah, to Utah border points, compared with rates to the first interstate points [fol. 123e] 92 Interstate Commerce Commission Reports beyond located on the line of the same respondent:

From Castle Gate, Utah, to—	Distance	June 30, 1946		May 1, 1953 (present rates)	
		Other than coking coal or slack	Slack	Other than coking coal or slack	Slack
Union Pacific	*Miles*	*Cents*	*Cents*	*Cents*	*Cents*
Portage, Utah	209	250	175	346	259
Woodruff, Idaho	213	250	185	346+40¢	270+12%
Uvada, Utah	322	450	350	555	454
Lien, Nev	326	460	360	565+40¢	464+40¢
Western Pacific					
Wendover, Utah	237	400	350	505	454
Pilot, Nev	254	410	360	515+40¢	464+40¢
Southern Pacific					
Lucin, Utah	254	400	350	505	454
Tecoma, Nev	266	410	360	515+40¢	464+40¢
Denver & Rio Grande					
Westwater, Utah	152	220	210	308	297
Mack, Colo	161	263	225	360+40¢	313+12%

Following the Ex Parte Nos. 162, 166, and 168 increases on Utah intrastate coal traffic, effective May 1, 1953, the retail price of coal in Salt Lake City increased on the average 51 cents per ton, which more than compensated for the foregoing rate increases from the Castle Gate group to Salt Lake City; namely, 46 cents per ton on sized coal, and 38 cents per ton on slack coal.

The rates on slack coal from Castle Gate to sugar factories in Utah located at Spearmint, West Jordan, and Layton are compared with the rates from Castle Gate to sugar factories at Whitney (Preston) and Blackfoot, Idaho. When the Ex Parte Nos. 162, 166, and 168 increases become effective on Utah intrastate traffic on May 1, 1953, the basic rates from Castle Gate to Whitney and Blackfoot exceeded the basic rates to Spearmint, West Jordan, and Layton by 26 cents and $1.50 per ton, respectively. With the Ex Parte No. 175 increase added to the rates to the Idaho sugar factories, the respective differences became 57 cents and $1.90 over the rates to the Utah factories. The same situation exists with respect to the rates on coal larger than slack from Castle Gate to the factories at West

Jordan, and Whitney, and on both types of coal from Sunnyside, Utah, to these Utah and Idaho sugar factories.

The rates on slack and larger sized coal from Castle Gate to Lewiston, Utah, and Franklin, Idaho, for distances of 241 and 243 miles, respectively, were the same on June 30, 1946; namely, $1.75 per ton on slack and $2.50 on larger sizes. Since May 1, 1953, the rates from Castle Gate to Lewiston have been $2.59 on slack and $3.46 on larger sized coal, in

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contrast with corresponding rates to Franklin of $2.90 and $3.86, or differences of 31 cents and 40 cents per ton. Because of competition arising from the refusal of the Utah commission to permit the increases on intrastate coal rates, it became necessary for the railroads to remove the increases from rates on certain interstate movements of slack coal; namely, from Rock Springs, Wyo., to Hill Field, Utah, and from Elkol, Wyo., to Devil's Slide and Bushnell, Utah. Rates on slack from Palisade and Rowie, Colo., to Ironton-Geneva, Utah, were also reduced, effective on May 20, 1953, in amounts approximating the Ex Parte No. 175 increases.

Coking coal is produced at Columbia, Sunnyside, and Horse Canyon, Utah, and moves to steel mills at Geneva. These are so-called captive mines. There is competition between coking coal produced at those Utah points, on the one hand, and Carbondale and Somerset, Colo., on the other. It was represented to the railroads that the higher rates on their interstate movements from Carbondale and Somerset, resulting from the Ex Parte No. 175 increase, would deprive them of the movement of coking coal to the steel mills at Geneva. For that reason the railroads removed the Ex Parte No. 175 increases on coking coal from Carbondale and Somerset to Geneva. In the months of January through April of 1954, 25,200 tons of coking coal moved from Carbondale and 22,146 tons moved from Somerset to Geneva at a rate of $2.90. During the same period, 275,705 tons of coking coal moved from Columbia to Geneva at a rate of $1.90. Coking coal is also shipped to Geneva from mines in Oklahoma and Arkansas.

The Utah Coal Operators Association is a nonprofit association representing the producers of coal in the State.

The association members produce more than 80 percent of the commercial coal mined in Utah. It opposes the application of the Ex Parte No. 175 increase. An exhibit filed by this association compares Utah intrastate rates with intrastate rates on coal in Montana, Wyoming, New Mexico, and Washington. Such comparisons afford no adequate basis for a determination of the lawfulness, under section 13 of the act, of the Utah intrastate rates. In addition, the exhibit shows two instances in which the Utah intrastate rates are now on a higher basis, mile for mile, than interstate rates, the distances being fairly comparable:

From Castle Gate, Utah, to—	Distance	Rates per ton other than slack	Slack
	Miles		
Milford, Utah	247	$4.32	$4.00
Preston, Idaho	254	3.86	3.02
Lund, Utah	282	4.64	4.32
Pocatello, Idaho	289	4.50	4.23

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From Castle Gate to Boise, Idaho, Portland, Oreg., and Spokane and Seattle, Wash., the interstate rates on coal have been increased by lesser percentages since December 31, 1946, than the Utah intrastate rates from Castle Gate to Salt Lake City, Orem, and Logan, Utah. This is explained by the fact that the Ex Parte Nos. 162, 166, and 168 increases were percentages subject to a maximum amount per ton. The result is that long-haul rates have been increased by lesser percentages than the rates for shorter hauls. The interstate rates so increased have been found to be reasonable.

At present, an intrastate rate of $2.97 applies on slack coal from Castle Gate to Devil's Slide, for a distance of 184 miles, as compared with an interstate rate on slack coal from Rock Springs to Devil's Slide of $1.68, for a distance of 159 miles. The latter rate was published, effective November 18, 1953. It yields ton-mile earnings of 10.5 mills, as compared with 16.1 mills under the intrastate rate of $2.97. If the Ex Parte No. 175 increase of 12 percent were applied to the intrastate rate of $2.97, it would become $3.33, and would yield 18 mills per ton-mile as compared with 10.5 mills for the interstate rate.

The coal association also shows the following relation between rates on slack coal:

From—	To—	Distance	Rate	Ton-mile earnings	Interstate Ex Parte No. 175 increase
		Miles		*Mills*	
Castle Gate, Utah	Ogden, Utah	152	$2.33	15.3	$2.61
Rock Springs, Wyo	do	191	2.61	13.6	2.61
Castle Gate, Utah	Bushnell, Utah	171	2.59	15.1	2.90
Rock Springs, Wyo	do	210	2.90	13.8	2.90

Coal rates generally apply from groups, and the foregoing comparisons are not representative of the group adjustment. The Rock Springs-Kemmerer group in Wyoming is approximately 100 miles wide and the Castle Gate group in Utah is about 35 miles in extent. The rates from these two producing groups may reasonably be equalized to Ogden and to Bushnell, respectively.

Evidence was also presented on behalf of the coal association to show that an increase in the intrastate rates on coal will result in an increased movement of this commodity by truck and in an increased use in Utah of natural gas and other fuels, with the result that the respondents' revenue from coal would be diminished, rather than increased. We have given consideration to this evidence and are not convinced that the resultant traffic loss will result in decreased revenue on coal.

Coke—The estimated annual movement of coke is 1,792 [fol. 123h] Utah Intrastate Freight Rates and Charges 95 carloads intrastate and 2,959 carloads interstate to points in Utah. Sample movements intrastate were from Geneva to Garland, Utah, 120 miles, to Logan, Utah, 152 miles, and to Lewiston, Utah, 169 miles, at a rate in each instance of $3.13 per net ton. Sample movements interstate were from Geneva to Whitney, Idaho, 179 miles, at a rate of $3.35 plus 40 cents, or $3.75 per net ton.

Sugar factories are located at Garland, Utah, and Preston, Idaho. On June 30, 1946, the rate to Garland from Ironton and Geneva, Utah, on coke of sizes other than pea coke and coke breeze, was $2.25, while the rate to Preston was $2.40. At present, the rate from Ironton and Geneva to Garland is $3.13 and to Preston $3.75, or a difference

of 62 cents compared with the earlier difference of 15 cents. The same situation exists in rates from Salt Lake City to Garland and Preston, except that a difference of 40 cents on June 30, 1946, has now increased to 89 cents.

Iron ore.—Iron ore is produced in Utah and shipped to steel mills in the State and in California, Colorado, and at points east of Chicago, Ill. During the year 1953, 57,014 carloads were shipped intrastate from Iron Springs, Desert Mound, and Iron Mountain, Utah, to Geneva and Ironton. In the same period, 17,844 carloads moved to Minnequa, Colo., 2,631 to Fontana, Calif., 1,071 to Long Beach, Calif., and 2,203 to points east of Chicago, or a total of 23,749 carloads interstate. Competition between steel mills located in California, Utah, and Colorado is very keen, and the nonapplication of the 12-percent increase under Ex Parte No. 175 to the intrastate rates in Utah gives a definite and serious advantage to Utah steel mills. The California steel mills, seeking to have the Ex Parte No. 175 increase removed from their rates on iron ore, have complained to the railroads about the failure to increase the Utah intrastate rates.

During May, August, and November, 1953, and February 1954, 15,828 carloads of iron ore moved intrastate from points in Utah to Geneva, Ironton, and International, Utah. The total charges collected by the railroads on those shipments was $1,763,007. If the Ex Parte No. 175 increase of 12 percent had been added, the revenue would have been $1,974,568, or $211,561 greater. On an annual basis, this represents a loss in revenue of $634,680 on Utah iron ore moving to steel mills in the State.

Manufactured iron and steel.—The estimated annual movement of manufactured iron and steel is 1,608 carloads intrastate and 2,000 carloads interstate to points in Utah. Sample movements intrastate were from Geneva to Salt Lake City, 38 miles, at a rate of $3.11 cents per net ton, and from Geneva to Ogden, 86 miles, at a rate of $3.89 per net ton. Sample movements interstate were from Minnequa to Salt Lake City, 628 miles, at a rate of 78 cents per 100

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pounds plus 15 percent, or 89.7 cents per 100 pounds and $17.94 per net ton; and from Pittsburg, Calif., to Salt Lake

City, 798 miles, at a rate of 63 cents per 100 pounds plus 15 percent, or 72.4 cents per 100 pounds, and $14.48 per net ton. The respondents estimate their annual loss of revenue on manufactured iron and steel intrastate in Utah resulting from the nonapplication of the Ex Parte No. 175 increase of 15 percent to be $24,840.

On behalf of the Utah Citizens Rate Association, it is shown that from Kaiser, Calif., to Los Angeles, Calif., 46 miles, the rate on iron and steel bars, plates, shapes, and sheets is $1.96 a net ton, minimum 80,000 pounds including the Ex Parte No. 175 increase. From Pittsburg to San Francisco, Calif., 50 miles, the rates on the same articles are $2.76 a net ton, minimum 30,000 pounds, and $1.96, minimum 60,000 pounds, including the Ex Parte No. 175 increases. These rates are compared with rates on the same articles from Geneva to Salt Lake City, 38 miles, of $3.50 a net ton, minimum 40,000 pounds, and $3.11, minimum 80,000 pounds, not subject to the Ex Parte No. 175 increase. The circumstances which motivated the establishment of the California intrastate rates are not revealed, and thus they bear slight relevance to the issue regarding the lawfulness of rates within Utah.

Lead and zinc ores, and ores and concentrates, n. o. s.— In the 4 months May, August, and November, 1953, and February 1954, 3,272 carloads of ores and concentrates, n. o. s., moved intrastate in Utah, and 555 carloads moved from points in Colorado, Nevada, Montana, California, Idaho, Texas, Arizona, Oregon, and Mexico to destinations in Utah. Projecting the number of shipments to an annual basis results in a total of 9,816 carloads intrastate and 1,665 carloads interstate. A majority of these shipments consisted of lead and zinc ores. Generally, the intrastate rates were less than $2 per ton, and the interstate rates ranged from $3 to $6 per ton. Most of the intrastate ores and concentrates were valued at $15 per ton or less, and interstate ores and concentrates, n. o. s., at $20 to $40. A so-called fixed metal-price rule was devised by the western railroads in collaboration with the mining industry to relieve the latter of dual increases occasioned by the postwar general rate increases, and the rise in certain metal valuations upon

which previous rates had been based. Under the rule, the value of recoverable copper, lead, and zinc was agreed to be 14 cents, 7 cents, and 8 cents per pound, respectively. The rule became effective on interstate traffic on October 15, 1949, but it did not become effective on intrastate traffic until, as a result of *Utah Intrastate Freight Rates and Charges, supra,* the full increases in Ex Parte Nos. 162, 166, and 168 went into effect on May 1, 1953. After that

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date, there was a decided shift of Utah intrastate shipments of ores and concentrates to the lower valuation brackets.

Ores and concentrates, n. o. s., moving in interstate commerce from points outside Utah to destinations in the State are competitive with similarly designated commodities moving intrastate in Utah. The estimated annual loss of revenue to the Utah railroads in intrastate movements of those commodities is $85,770.

The Utah Mining Association opposes any further increases in the Utah intrastate rates on ores and concentrates. Increases in supply, labor, ore-treatment, and transportation costs, and the volume of imports in recent years, have created unfavorable economic conditions in the lead-zinc mining industry. The addition of the Ex Parte No. 175 increases to rates on the industry's intrastate traffic, the association urges, would add to the burdens at present being borne, serve to further restrict production, employment, profits, and exploration, and have the net effect of decreasing freight revenue from products of mines. The following table shows the number of lead-zinc mines operating in Utah during the years shown, classified by production tonnage:

Period	Total	Small 1–1,000 tons	Medium 1,000–10,000 tons	Large Above 10,000 tons
Year 1946	46	31	7	8
Year 1948	74	56	12	6
Year 1950	52	40	7	5
Year 1952	31	22	3	6
Year 1953	12	8	0	4

The association admits that the traffic in concentrates and metal in Utah and in the Western States generally

moves principally in interstate commerce and now bears the Ex Parte No. 175 increases, but it calls attention to the fact that any ore production lost through the intrastate application of Ex Parte No. 175 increases would also reduce the interstate movement of concentrates and metals.

Uranium and vanadium ores.—Movements of uranium and vanadium ores from Thompson, Utah, to Nada, Colo., and from Green River, Utah, to Kalunite, Utah, during the 3 months August and November 1953 and February 1954, aggregated 5,285 tons and 14,311 tons, respectively. The distance for the interstate movement was 142 miles and for the intrastate movement 186 miles. Depending upon the percentage of recoverable content of the ores, the rates on the interstate movement on August 1, 1953, were $2.14 and $2.65 per net ton, and on the intrastate movement, $2.33 and $2.87. The Ex Parte No. 175 increase was first applied on the interstate movement from Thompson to Nada but was removed prior to August 1953, upon request of re-

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ceivers at Nada because a similar increase was not applied from Green River to Kalunite.

Waste materials for remelting.—The estimated annual movement of waste materials for remelting is 170 carloads intrastate and 509 carloads interstate to points in Utah. Sample movements intrastate were from Robbe, Utah, to Lead, Mine, Utah, at a rate of $21 per carload, and from Robbe to Garfield, Utah, at a rate of $1.56 per net ton. Sample movements interstate were from Eilers, Colo., to Garfield at a rate of $8.31 per net ton plus 15 percent, and from Selby, Calif., to Garfield at a rate of $8.10 per net ton plus 15 percent.

Clay and bentonite.—The estimated annual movement of clay and bentonite is 1,775 carloads intrastate and 513 carloads interstate to destinations in Utah. Sample movements intrastate were from Silver City, Utah, to Salt Lake City, 87 miles, at a rate of 8.5 cents per 100 pounds, or $1.70 per net ton, and from Henefer, Utah, to Utah Sugar House, Utah, 77 miles, at a rate of $1.56 per net ton. Sample movements interstate were from Pueblo, Colo., to Ironton, Utah, 579 miles, at a rate of 37 cents per 100 pounds, or $7.40

per net ton, and from Moorcroft, Wyo., to Price, Utah, 885 miles, at a rate of 63 cents per 100 pounds, or $12.60 per net ton.

Sand and gravel.—The estimated annual movement of sand and gravel is 1,493 carloads intrastate and 201 carloads interstate to points in Utah. Sample movements intrastate were from Nash, Utah, to Price, Utah, 104 miles, at a rate of $1.24 a net ton, and from Cedar City, Utah, to Geneva, 249 miles, at a rate of $2.75 a net ton. Sample interstate movements were from Pueblo, Colo., to Magna, Utah, 633 miles, at a rate of 30 cents per 100 pounds, or $6 a net ton, and from Emmett, Idaho, to Salt Lake City, 440 miles, at a rate of $4.99 a net ton.

Lime rock.—The estimated annual movement of lime rock to Utah points is 1,601 carloads intrastate and 8 carloads interstate. Illustrative movements intrastate were from Uisco, Utah, to Garland, Utah, 205 miles, at a rate of $2.21 a net ton, and from Uisco to West Jordan, Utah, 141 miles, at a rate of $1.49 a net ton. Representative interstate movements were from Lincoln, Idaho, to Garland, 188 miles, at a rate of $2.934 a net ton, and from Blackfoot, Idaho, to Garland, 157 miles, at a rate of $2.665 a net ton.

Fuel and road oil.—The respondents estimate the annual movement of fuel and road oil as 7,005 carloads intrastate and 13 carloads interstate to points in Utah. Sample movements intrastate were from Salt Lake City to Iron Mountain, 278 miles, at a rate of 35 cents, and from Pioneer, Utah, to Cedar City, Utah, 281 miles, at a rate of 35 cents. Respondents estimate the annual loss in revenue from intrastate shipments of fuel and road oil to be $48,291. On the Union Pacific in 1953, 152 carloads of fuel and road

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oil moved from Salt Lake City to points in Idaho, and 82 carloads to points in Nevada. The Ex Parte No. 175 increase was applied to the interstate rates on these shipments.

Gasoline.—The estimated annual movement of gasoline is 2,387 carloads intrastate and 9 carloads interstate to points in Utah. Sample movements intrastate were from Salt Lake City to Price, 126 miles, at a rate of 20 cents,

and from Salt Lake City to Cedar City, Utah, 275 miles, at 49 cents. On the Union Pacific in 1953, 559 carloads of gasoline moved from Salt Lake City to points in Idaho, 321 carloads to points in Nevada, and 2 carloads to points in Wyoming. The Ex Parte No. 175 increase of 15 percent was applied on the interstate shipments. Respondents estimate the annual loss of revenue on intrastate shipments of gasoline in Utah resulting from the nonapplication of the Ex Parte No. 175 increase to be $34,797.

Cement.—Respondents estimated the annual movement of cement as 1,821 carloads intrastate and 216 carloads interstate to and from points in Utah. Sample movements intrastate were from Devil's Slide to Cedar City, 311 miles, and from Salt Lake City to Cedar City, 275 miles, both at a rate of 24 cents. Sample movements interstate were from Devil's Slide to Las Vegas, Nev., 518 miles, at a rate of 40 cents plus 15 percent, or 46 cents, and from Devil's Slide to Rock Springs, 159 miles, at a rate of 32 cents plus 15 percent, or 36.8 cents. Respondents estimate their annual loss of revenue on cement to be $23,358.

There are two cement plants in Utah; one operated by the Ideal Cement Company at Devil's Slide, and the other by a competing producer at Salt Lake City. In 1948, a new mill was completed at Devil's Slide, which increased the annual production capacity at that point from 700,000 to 2,200,000 barrels. The Ideal Cement Company has a warehouse or terminal at Salt Lake City. Distribution from this warehouse or terminal is wholly by truck to points in Utah and other States. The rates on cement, minimum 40,000 pounds, from Devil's Slide to Ogden, 32 miles, and Salt Lake City, 38 miles, are 8.5 cents and 12 cents, respectively. In order to meet truck competition, the railroads established rates, minimum 100,000 pounds, of 5 cents to Ogden and 6 cents to Salt Lake City, effective January 12, 1954, limited to expire on December 31, 1954, unless changed or extended.

The Monolith Portland Midwest Company operates a cement plant at Laramie, 57 miles west of Cheyenne, Wyo., and 483 miles east of Ogden. From 1937 to 1945, this company shipped annually from Laramie to points in Utah an

average of 1,640 tons (8,610 barrels) of cement, equivalent to 820 carloads of 40,000 pounds each. It has not shipped cement into Utah since 1948. The Monolith Company contends that the Utah intrastate rates on cement are unduly

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prejudicial to its plant at Laramie and give undue advantage to the cement mill at Devil's Slide. On June 30, 1946, the rates, minimum 40,000 pounds, to Salt Lake City were 34 cents from Laramie and 8 cents from Devil's Slide, making a rate difference of 26 cents. At present, the respective rates, minimum 40,000 pounds, are 55.2 cents and 12 cents, making a rate difference of 43.2 cents. This difference would be reduced by 1.8 cents to 41.4 cents if the 15-percent increase under Ex Parte No. 175 were applied to the intrastate rate from Devil's Slide to Salt Lake City. Special kinds of cement move for longer distances than from Laramie to Salt Lake City.

It is urged on behalf of the Ideal Cement Company that an increase in intrastate rates on cement from Devil's Slide will result in substantial division to motortrucks of the cement traffic presently moving by rail. We are convinced on the record before us that the increases sought by respondents on cement will result in substantially increasing their revenue on this commodity, even though some of this traffic may be diverted to competing forms of transportation.

Sugar.—The estimated annual movement of sugar is 489 carloads intrastate and 642 carloads interstate to points in Utah. Sample movements intrastate were from Garland to Lehi, Utah, 108 miles, at a rate of 22 cents, and from Lewiston to Ogden Sugar Works, Utah, 91 miles, at a rate of 17 cents. Sample movements interstate were from Myers, Idaho, to Ogden, 211 miles, at a rate of 39 cents plus 15 percent, or 44.8 cents, and from McMillan, Idaho, to Ogden Sugar Works, 246 miles, at a rate of 39 cents plus 15 percent, or 44.8 cents.

Wheat.—The estimated annual movement of wheat is 904 carloads intrastate and 6,914 carloads interstate to points in Utah. Four Utah points received both interstate and intrastate shipments, 5 received only interstate, and 8 received only intrastate shipments.

Animal and poultry feed.—The estimated annual movement of animal and poultry feed to Utah points is 711 carloads intrastate and 528 carloads interstate. Sample movements of beet pulp were from West Jordan to Richfield, Utah, 160 miles, at a rate of 21 cents, and from Lincoln, Idaho, to Honeyville, Utah, 160 miles, at a rate of 19 cents plus 15 percent, or 21.8 cents. Other sample movements were from West Jordan to Cedar City, 280 miles, at a rate of 27 cents, and from Lincoln, Idaho, to Garland, 188 miles, at a rate of 24 cents plus 15 percent, or 27.6 cents.

Sheep and goats.—The estimated annual movement of sheep and goats to Utah points is 2,612 carloads intrastate and 1,239 carloads interstate, and the estimated annual loss in revenue from intrastate movements is $35,547. Sample intrastate movements of sheep in double-deck cars were, from Wahsatch, Utah, to Timpie, Utah, 143 miles, at a rate of $64.09 per car, and from Nephi, Utah, to Milford, Utah,

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134 miles, at a rate of $42.25 per car. Comparable interstate movements of sheep were, from Montrose, Colo., to Cisco, Utah, 128 miles, at a rate of $53.21 per car plus 15 percent, or $61.19, and from Montrose to Thompson, Utah, 151 miles, at a rate of $57.91 per car plus 15 percent, or $66.59 per car. Additional movements were, from Jericho, Utah, to Coalville, Utah, 180 miles, at a rate of $56.33 per car, and from Montross to Green River, Utah, 178 miles, at a rate of $62 plus 15 percent, or $71.99 per car.

In two instances of record, the intrastate rates on sheep in double-deck cars substantially exceed the interstate rates including the Ex Parte No. 175 increases for comparable distances. From Lakeside, Utah, to Wahsatch, 112 miles, the rate is $67.28 per car, while from Debeque, Colo., to Thompson, 112 miles, it is $50.08 per car plus 15 percent, or $57.58 per car. From Cedar City, Utah, to Kaysville, Utah, 294 miles, the rate is $122.06 per car, compared with an interstate rate of $76.68 plus 15 percent, or $88.18 per car, from Aspen, Colo., to Mounds, Utah, 284 miles.

Cattle and calves.—Respondents estimate the annual movement of cattle and calves to Utah points as 562 carloads intrastate and 1,130 carloads interstate. Illustrative

movements intrastate and interstate of cattle in single-deck cars were, from Delta, Utah, to Ogden, 171 miles, at a rate of $82.72 per car, and from Opal, Wyo., to Ogden, 170 miles, at a rate of 30.5 cents per 100 pounds, equivalent to $80.30 per car with an 11-ton load, plus 15 percent, or charges per car of $92.34. Also compared were shipments from Heber, Utah, to Ogden, 107 miles, at a rate of $48.51 per car, and from Malad, Idaho, to Ogden, 73 miles, at a rate of $57.13 per car plus 15 percent, or $65.69 per car. From Spanish Fork, Utah, to Ogden, 92 miles, the intrastate rate is $57.13 per car, while from Weston, Idaho, to North Salt Lake City, Utah, 96 miles, the rate is $50.08 per car plus 15 percent, or $57.59 per car. In this instance it appears that the intrastate rate is now as high as the interstate rate.

Class and merchandise rates.—The present first-class rates from Salt Lake City for comparable hauls to interstate and intrastate destinations are shown below:

From Salt Lake City to—	Distance	First-class rate
	Miles	*Cents*
Wahsatch, Utah	101	109
Wyuta, Wyo	107	125
Portage, Utah	94	102
Woodruff, Idaho	98	125
Utida, Utah	99	110
Anderson, Idaho	100	137
Lewiston, Utah	126	131
Franklin, Idaho	128	151

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Merchandise rates were established several years ago to meet truck competition from Salt Lake City to points in southern Idaho and Wyoming and in northern Utah. They are less-than-carload rates based upon a percentage of the rates for the first four classes, and apply on specific lists of articles. The respondents compare column A merchandise rates from Salt Lake City to certain Utah points, with those to Idaho and Wyoming destinations for comparable distances, as follows:

From Salt Lake City to—	Distance	Merchandise rate
	Miles	*Cents*
Portage, Utah	94	98
Woodruff, Idaho	98	101
Utida, Utah	99	104
Anderson, Idaho	100	106
Lewiston, Utah	126	104
Franklin, Idaho	128	106

The Utah Citizens Rate Association compares certain less-than-carload rates on specified commodities including paint, refrigerators, radio sets, drugs, hardware, and canned goods, from Salt Lake City to points in Utah with the merchandise rates on those commodities to points in Idaho and Wyoming for comparable hauls. Typical comparisons are listed below:

Commodity	From Salt Lake City to—	Distance	L. c. l. rate
		Miles	*Cents*
Paint	Delta, Utah	135	93
Do	Pocatello, Idaho	170	90
Refrigerators	Thompson, Utah	217	220
Do	Rock Springs, Wyo	227	141
Radio sets	Price, Utah	126	140
Do	Pocatello, Idaho	170	90
Drugs	Thompson, Utah	217	220
Do	Idaho Falls, Idaho	221	177

Most points in Utah do not have merchandise rates due to the fact that motor competition is a compelling factor only in the northern part of the State. The foregoing interstate merchandise rates do not reflect the full Ex Parte No. 175 increase because of truck-compelled reductions; no similar truck competition affects the intrastate rates shown, and the comparisons made are of unlike things.

Evidence by the Utah commission.—Based on annual reports filed by four of the principal respondents with the Utah commission, it appears that the interstate freight-service operating ratio (freight-service expense divided by freight-service revenue) and the intrastate density (ton-miles per mile of main-line track) are as to each respond-

[fol. 123p] Utah Intrastate Freight Rates and Charges 103

ent more favorable than corresponding systemwide figures for 1953, as shown below:

1953	Intrastate	System
Denver & Rio Grande Western		
Freight operating ratio, percent	56.66	57.72
Density[1]	4,303,760	2,526,252
Southern Pacific		
Freight operating ratio, percent	46.74	66.00
Density[1]	12,703,072	3,798,280
Union Pacific		
Freight operating ratio, percent	55.23	62.17
Density[1]	5,148,461	3,474,790
Western Pacific		
Freight operating ratio, percent	51.72	61.38
Density[1]	3,745,726	3,408,515

[1] Ton-miles per mile of main-line track.

In preparing its annual report to the Utah commission, the Union Pacific follows certain rules, recommended by a convention resolution of the National Association of Railway Commissioners, for the determination of revenues and expenses allocable to each State. The Union Pacific and the other respondents dispute the validity of the results obtained from the application of the formula. They assert that the reports do not reflect the actual cost of operation in Utah and therefore afford no basis for comparing operating costs. One of the principal objections to the density figures above shown is that they were obtained by using only the miles of main track. The density results would be substantially reduced if branch-line mileage were included. The comparisons thus made are of little significance in our determination here. A more important consideration is the positive showing made upon this record that the average unit expense of servicing Utah intrastate traffic is at least as great as that of servicing interstate traffic to and from Utah.

The Utah commission also submitted an exhibit portraying various operating statistics of the Denver & Rio Grande Western in Utah, Colorado, and for the entire system. The

data were taken from the railroad's annual reports filed with the two State commissions for 1952 and 1953, and purport to show that the carrier's operations in Utah are substantially more favorable than in Colorado or over the entire system. Except for a minor portion in New Mexico, the Denver & Rio Grande Western's trackage lies wholly in Utah and Colorado. Some of the principal comparisons for 1953 are listed below:

	Utah	Colorado	System
Tons per loaded freight car	34.65	30.74	32.32
Tons per train	1,774	1,394	1,530
Tons per locomotive	1,002	777	857
Tons per mile of track	4,303,760	1,979,776	2,526,252

[fol. 123q] 104 Interstate Commerce Commission Reports

Evidence similar in nature was offered in *Kansas City Cham. of Com.* v. *Atchison, T. & S. F. Ry. Co.*, 164 I. C. C. 302, to show the favorable results of railroad operations in Kansas, and that the carriers serving Kansas were not in need of increased revenue. We observed therein, at page 308, and it is equally pertinent here, that the method of allocating revenues and expenses to a particular State was open to so many serious objections that the results obtained were unreliable.

A study was submitted by the Utah commission based on this Commission's carload waybill statistics for 1952, showing the Utah intrastate ton-mile revenue as compared with the revenue per ton-mile on interstate shipments originated during that year, separated as to the principal commodity groups. These ton-mile figures are listed below:

Products	Revenue per ton-mile	
	Intrastate	Interstate
	Cents	*Cents*
Agriculture	2.57	1.14
Animals	4.15	2.71
Mines	1.06	.74
Manufactured miscellaneous	3.63	1.52
Total of all products	1.21	1.06

It is generally recognized that as the length of the haul increases, the revenue per ton-mile decreases. The foregoing instrastate ton-mile revenues are computed on traffic which moved for relatively short hauls, while the inter-

state revenues are based on relatively long hauls. Due to a marked difference in the lengths of haul as between intrastate and interstate traffic, the comparisons thus made are not determinative of the issues before us.

Discussion and conclusions.—This proceeding presents two main questions for determination. First, do the present intrastate rates and charges cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate commerce, on the other hand; and second, do the present intrastate rates and charges cause any undue, unreasonable, or unjust discrimination against interstate commerce? In considering the first question, it should be noted that this provision of section 13 (4) of the act is primarily for the protection of persons and localities and not for the benefit of the carriers. Only one interstate shipper of cement presented evidence purporting to show undue and unreasonable advantage and prejudice between persons and localities. That evidence is not sufficient to support the statewide finding requested.

There remains the question of unlawful discrimination against interstate commerce. As noted, the respondents estimate that their annual revenues will be increased by approximately $1,880,000 if the Ex Parte No. 175 increases

[fol. 123r] Utah Intrastate Freight Rates and Charges 105

are added to the present intrastate rates. About 80 percent of that amount, it is estimated, would come from the intrastate movement of products of mines. This would leave some 20 percent, or $376,000, to be borne by other commodities.

The record is convincing that the transportation conditions affecting Utah intrastate traffic differ in no material respect from those affecting interstate traffic to and from that State, and that Utah intrastate traffic is no less able to bear the full increase sought than the interstate traffic. The Ex Parte No. 175 increases were authorized for interstate rail traffic throughout the country based upon the total revenue needs of the railroads generally, and have been made effective on interstate traffic generally as well as on intrastate traffic within most of the States. The railroads' need for additional revenue to meet increased operating

expenses was the underlying basis for our decision in that proceeding. Those increased operating costs were not confined to interstate traffic, but were and are incurred also on Utah intrastate traffic.

We conclude that—

1. The conditions incident to the intrastate transportation of freight in Utah are not more favorable than those incident to the interstate transportation between Utah and adjoining States.

2. The amounts and percentages by which interstate freight rates and charges between points in Utah and points in other States were increased, as authorized in Ex Parte No. 175, are just and reasonable.

3. The present Utah intrastate rates and charges on carload and less-than-carload freight, except on sugar beets and beet-sugar final molasses destined to sugar factories, and excepting certain rates on coal, sheep, and cattle, hereinafter enumerated, imposed by authority of the State, are abnormally low, and traffic thereunder fails to produce its fair share of the earnings required to yield revenue sufficient to enable the respondents, under honest, economic, and efficient management, to provide adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service, and thereby accomplish the purposes of the Interstate Commerce Act, as set forth in the national transportation policy declared by the Congress to develop and preserve a national transportation system adequate to meet the needs of the commerce of the United States, of the postal service, and of the national defense. The burden thus cast upon interstate commerce is undue in and to the extent that these intrastate rates and charges are less than they would be on the bases herein prescribed; and these intrastate rates and charges cause, and for the future will cause, undue, unreasonable, and unjust discrimination against interstate commerce.

[fol. 123s] 106 Interstate Commerce Commission Reports

4. The undue, unreasonable, and unjust discrimination herein found to exist should be removed by applying to the Utah intrastate rates and charges, on the commodities and

traffic herein described, the same respective increases as are and for the future may be maintained by the respondents on like interstate traffic between points in Utah and adjoining States under our authorization in Ex Parte No. 175, provided that increases may not be made in intrastate rates to levels higher than the interstate rates on like traffic to or from Utah for like or greater short-line distances over the same lines of railroad, except in instances where the interstate rates, and not the intrastate rates, are designated as published to meet motor-carrier competition.

5. The establishment of increases in intrastate rates and charges as prescribed in finding 4 will not result in unreasonable rates, or rates that are unreasonable in relation to interstate rates, and will substantially increase the respondents' annual revenues.

6. The increased revenues to the respondents which will result from the increased rates and charges as provided in finding 4 are required from intrastate traffic in Utah in order to enable the respondents to provide adequate and efficient railway transportation service.

7. In certain instances it appears that the present Utah intrastate rates are now as high as corresponding interstate rates including the Ex Parte No. 175 increases for comparable distances. The intrastate rates specified below, are excepted from the findings herein:

Rates on sugar beets or beet-sugar final molasses destined to sugar factories.

Rates on coal, viz:

From Castle Gate to Milford, Utah, slack and other sizes.

From Castle Gate to Lund, Utah, slack and other sizes.

From Castle Gate to Devil's Slide, Utah, slack.

Rates on sheep, in double-deck cars viz:

From Lakeside to Wahsatch, Utah.

From Cedar City to Kaysville, Utah.

Rates on cattle, in single-deck cars, viz:

From Spanish Fork to Ogden, Utah.

The foregoing findings relate to Utah intrastate rates generally, and are without prejudice to reexamination, upon complaint or otherwise, as to the lawfulness of any individual Utah intrastate rate on any particular commodity.

An order will be entered carrying into effect the foregoing findings, unless this Commission is notified by the Utah commission, within 30 days from the date of service of this report, that it will permit the increase required to remove the unlawfulness herein found to exist.

[fol. 123t] Utah Intrastate Freight Rates and Charges 107

FREAS, *Commissioner*, dissenting in part:

I agree with the conclusions of the majority only insofar as they relate to the exempted rates on sugar beets, beet-sugar final molasses, coal, sheep, and cattle.

My views with respect to such proceedings have heretofore been expressed and need not be repeated here (see particularly my dissenting expressions in *Missouri Intrastate Freight Rates and Charges*, 289, I. C. C. 733, p. 765 et seq., and in *Alabama Intrastate Rates on Coal, Lumber, Scrap Iron*, 294 I. C. C. 579, p. 592 et seq.).

COMMISSIONERS ALLDREDGE and HUTCHINSON did not participate in the disposition of this proceeding.

[fol. 124] PLAINTIFFS' EXHIBIT NO. 4

BEFORE THE INTERSTATE COMMERCE COMMISSION

UTAH INTRASTATE FREIGHT RATES AND CHARGES

EX PARTE 175

DOCKET NO. 31484

PETITION FOR RECONSIDERATION AND REHEARING

H. H. ELLSWORTH, EXECUTIVE SEC.
UTAH CITIZENS RATE ASSOCIATION
280 So. 5th West
Salt Lake City, Utah

CALVIN L. RAMPTON
721 Cont'l Bank Bldg.
Salt Lake City, Utah
Attorney for Utah Citizens Rate Association

KEITH E. SOHN, COMMERCE ATTORNEY
314 State Capitol
Salt Lake City, Utah
representing the PUBLIC SERVICE COMMISSION OF UTAH

Date: December 5, 1955

Due: December 8, 1955

[fol. 125] BEFORE THE INTERSTATE COMMERCE COMMISSION

In Re UTAH INTRASTATE FREIGHT:
RATES AND CHARGES, EX PARTE 175: Docket No. 31484

PETITION FOR RECONSIDERATION AND REHEARING

COME NOW PUBLIC SERVICE COMMISSION OF UTAH and the UTAH CITIZENS RATE ASSOCIATION, two of the parties to the above entitled matter, and respectfully move the Commission to grant a rehearing and reconsideration in the above

entitled matter on the grounds and for the reason that the Order entered herein on the 17th day of October, 1955 is unlawful and beyond the jurisdiction of the Commission and is contrary to the law and the evidence in the following particulars:

1. The finding of the Commission to the effect that the amounts and percentages by which interstate freight rates and charges between points in Utah and points in other States were increased, as authorized by Ex Parte No. 175, are just and reasonable, is contraty to the evidence and to the law in that said interstate rates as fixed in Ex Parte No. 175 were not just and reasonable, but were unjust and contrary to the law in that said Ex Parte No. 175 granted flat, horizontal percentage increases on all freight rates with certain restricted exceptions without regard to whether or not certain rates were too low or too high [fol. 126] before said increase, without regard to whether or not certain rates were contributing more or less than their share to the railroad earnings, and without regard to whether the increases granted created discrimination and hardship as prohibited by the Interstate Commerce Act.

2. That the Commission's Conclusions and Findings Nos. 1, 3, 4, 5 and 6 are unsupported by any substantial evidence introduced either before this Commission or before the Public Service Commission and are contrary to the weight of the evidence in the case in that the petitioning railroads have presented no evidence of any kind upon which the Commission could base the Findings above listed.

WHEREFORE, petitioners pray:

A. That the Order of this Commission to the effect that the rates sought shall become effective by order of the Interstate Commerce Commission unless the Utah Commission, within 30 days, allows them to become effective under authority of the Utah Commission, immediately be vacated pending the final determination of this Petition for Rehearing.

B. That upon consideration of this Motion for Rehearing and Order of this Commission, dated October 17, 1955

in the above entitled matter be annulled and set aside and that the Commission rehear and reconsider the issues involved in this matter.

Respectfully submitted,

UTAH CITIZENS RATE ASSOCIATION
By Calvin L. Rampton, Counsel
[fol. 127] PUBLIC SERVICE COMMISSION OF UTAH
By KEITH E. SOHM, Commerce Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by mailing by first-class mail a copy thereof, postage prepaid, properly addressed to each party.

Dated at Salt Lake City, Utah, this 5th day of December, 1955.

CALVIN L. RAMPTON, Attorney

[fol. 128] PLAINTIFFS' EXHIBIT NO. 4A

BEFORE THE INTERSTATE COMMERCE COMMISSION

UTAH INTRASTATE FREIGHT)
) DOCKET NO. 31484
RATES AND CHARGES)

REPLY ON BEHALF OF RESPONDENT RAILROADS TO PETITION FOR RECONSIDERATION AND REHEARING FILED BY THE PUBLIC SERVICE COMMISSION OF UTAH AND THE UTAH CITIZENS RATE ASSOCIATION

Albert R. Bowen
L. W. Hobbs
A. U. Miner
Ernest P. Porter
E. L. Van Dellen
W. H. Fitzpatrick
Attorneys for Respondent Railroads

December 9, 1955
1416 Dodge Street
Omaha 2, Nebraska

[fol. 129] BEFORE THE INTERSTATE COMMERCE COMMISSION

UTAH INTRASTATE FREIGHT)
) Docket No. 31484
RATES AND CHARGES)

REPLY ON BEHALF OF RESPONDENT RAILROADS TO PETITION FOR RECONSIDERATION AND REHEARING FILED BY THE PUBLIC SERVICE COMMISSION OF UTAH AND THE UTAH CITIZENS RATE ASSOCIATION

Come now the respondent railroads in the above-entitled proceeding and reply to the petition of the Public Service Commission of Utah and the Utah Citizens Rate Association for reconsideration and rehearing dated December 5, 1955. This reply will treat with each paragraph of the petition and the ultimate findings of the Commission in the order in which they are referred to by petitioners.

PETITIONERS' PARAGRAPH "1"

The allegations in this paragraph assail Finding 2, Sheet 30, in this proceeding, and the decision of the Commission in Ex Parte No. 175, 284 I.C.C. 589, and its most recent decision making permanent the increases granted—which decision is dated October 17, 1955. Treating with this, the Commission, at Sheet 30 of the report in this proceeding, made the following finding:

[fol. 130] "The Ex Parte No. 175 increases were authorized for interstate rail traffic throughout the country based upon the total revenue needs of the railroads generally, and have been made effective on interstate traffic generally as well as on intrastate traffic within most of the States. The railroads' need for additional revenue to meet increased operating expenses was the underlying basis for our decision in that proceeding. Those increased operating costs were not confined to interstate traffic, but were and are incurred also on Utah intrastate traffic." (Sheet 30)

See also *California Intrastate Freight Rates and Charges*, 289 I.C.C. 767, 780; *Louisiana Intrastate Freight Rates and Charges*, 291 I.C.C. 279, 314. Finding 2 is fully supported by the record in Ex Parte 175, and the record in this proceeding.

PETITIONERS' PARAGRAPH "2"

In this paragraph the petitioners assail the Commission's conclusions and findings Nos. 1, 3, 4, 5 and 6 as unsupported by substantial evidence, and the claim is made that such findings are contrary to the weight of the evidence in the case in that the petitioning railroads have presented no evidence of any kind upon which the Commission could base those findings.

We will treat with those findings in the order in which they are listed by petitioners, showing that all of such findings are properly supported by substantial and probative evidence and that the conclusions on Sheets 29 and 30 are likewise fully supported by the record.

Finding 1:

This finding is fully supported by the evidence of Mr. R. K. Bradford, Vice President of the Denver and Rio [fol. 131] Grande Western Railroad Company (Transcript, Pages 264 to 271), and the evidence of Witness Herman S. Jensen, Asst. Superintendent of the Union Pacific Railroad Company, who has jurisdiction over all of the Union Pacific Railroad Company lines in Utah (Transcript, Pages 155 to 163). The evidence of these two operating men, one of 40 years' and the other of 23 years' experience, showed that intrastate traffic handled within Utah and interstate traffic to or through points in that state are handled in the same trains, by the same crews and other employees, and through the same yards and other facilities; that no distinction is made between intrastate and interstate traffic in the loading, unloading and line-haul movement. Both of these witnesses testified that they make no distinction whatever in the handling of the two traffics.

None of this testimony was disputed, contradicted or denied by any party of record. In other 13th Section proceedings, this Commission has deemed sufficient, evidence

which justified a finding that intrastate and interstate traffic are handled under substantially similar circumstances and conditions. *Montana Intrastate Freight Rates and Charges,* 284 I.C.C. 167, 177, 204; *Utah Intrastate Freight Rates and Charges,* 287 I.C.C. 315, 343; *Wyoming Intrastate Freight Rates and Charges,* 287 I.C.C. 743, 755; *California Intrastate Freight Rates and Charges,* 289 I.C.C. 767, 779, 780. And the courts have held such finding ample to support the orders of this Commission. *Illinois Commerce Comm'n* v. *U. S.,* 292 U. S. 474, 482, 483; *King* v. [fol. 132] *United States,* 344 U. S. 254, 273.

Findings 3, 4 and 5:

These findings are fully supported by the evidence introduced into the record by Mr. G. M. Watson, Asst. Freight Traffic Manager of the Union Pacific Railroad Company, a man of 37 years' experience in traffic and rate work, as shown in his Exhibits 3 to 38, both inclusive, (Transcript, Pages 47 to 119, 217, 218); and the evidence of Witness T. K. Early, Freight Traffic Manager of the Denver and Rio Grande Western Railroad Company, a man of 35 years' experience in traffic and rate work, as shown in his Exhibits 40 to 63, both inclusive (Transcript, Pages 163 to 217). The testimony and exhibits of these witnesses showed actual movements intrastate in Utah of the major tonnage commodities, representing approximately 85% of the revenue involved in the proceeding; the amount collected on each movement and the amount which would have been collected had the Ex Parte 175 increases been in effect in Utah were shown, and the differences as between such amounts were calculated—as showing the loss in revenue which the carriers have sustained by reason of the Utah Commission's failure to permit the Ex Parte increases on Utah traffic. These witnesses set forth interstate movements between Utah and other states, showing that the Ex Parte 175 increases were applicable on the interstate traffic of those same commodities.

Witness Herman C. Kroll, Asst. Manager of the Statistical Bureau of the Western Traffic Association and a man [fol. 133] of 22 years' railroad statistical experience, made an independent study for the railroads in Utah, on a terminated basis, showing an annual loss of revenue of $1,532,550

on products of mines, $263,868 on manufactures and miscellaneous, $52,215 on animals and products, and products of agriculture, and $31,714 on switching charges and LCL freight charges—a total of $1,880,347, resulting from the failure of the Utah Commission to permit the Ex Parte 175 increases on Utah intrastate traffic. He made such studies on actual movements during May, August, and November 1953, and February, 1954, and estimated the annual figure by multiplying the figure for the four months by three. (Ex. 2,) (P. 6 & 7)

The foregoing probative and substantial evidence fully supports the Commission's Findings 3, 4 and 5 on Sheets 30 and 31 of the report.

Finding 6:

This finding of the Commission is fully supported by the evidence and testimony of Witness Kroll, showing that the gross property investment of the Class I Railroads in Utah in road and equipment used in transportation service, plus cash and material and supplies, was $2,886,823,152 in 1948 and ranged from $2,987,791,493 in 1949 to $3,538,000,304 in 1953; and that the net property investment averaged as of the beginning and the end of the year was $2,377,643,947 in 1948, and ranged from $2,417,049,082 in 1949 to $2,842,418,112 in 1953; that the percentage of return on net investment of the Utah railroads was 3.98% in 1948, 2.58% in 1949, 4.33% in 1950, 3.66% in 1951, 3.91% in 1952 and [fol. 134] 3.82% in 1953 (Exhibit 2, Page 1; Transcript, Pages 18, 19). The evidence of this witness also showed that there had been a serious reduction in net railway operating income of $6,476,296 in the first quarter of 1954 as compared to the like period in 1953, reflecting a reduction of almost 28% under that for the same period in 1953 (Exhibit 2, Page 2; Transcript, Pages 20, 21).

The record also shows that in 1952 the revenue per ton-mile of the railroads in the United States was 1.43 cents; in the Western District 1.393 cents; in the Mountain-Pacific States (including Utah) 1.398 cents; and in the state of Utah on intrastate and interstate traffic 1.258 cents. In other words, as a result of the failure of the Utah Commission to grant the Ex Parte 175 increases, the earnings per

ton-mile on interstate and intrastate traffic is approximately 10% below that in the Mountain-Pacific states (including Utah) (Exhibit 1, Pages 5 and 6; Transcript, Pages 10 to 13 inclusive).

As previously referred to, the evidence of Witness Kroll also showed that the railroads in Utah on an annual basis were losing $1,880,347. With these railroads in Utah earning less than 4% on their net investment, it is quite evident that they must have the increased revenues provided in Finding 4 to enable them to provide adequate and efficient railway transportation service.

The evidence referred to in connection with Findings 1, 3, 4, 5 and 6 likewise fully supported the conclusions of [fol. 135] the Commission on Sheets 29 and 30 of the report.

In order to shorten this reply, we have sharply summarized the evidence which fully supports the Commission's findings and conclusions. As a matter of fact, the evidence was very elaborate, showing in detail for Utah intrastate traffic, the movements and distances between the origins and destinations, the location thereof, the details of the movements as to cars and weights, the charges as assessed and the charges which would have been applicable if the Ex Parte 175 increases had been in effect in Utah, etc. This evidence was carefully briefed at Pages 9 to 68 of our printed brief dated July 12, 1954, to which the Commission is respectfully referred.

Petitioners' Prayer—Paragraph "A"

It should be evident to the Commission that petitioners have not made any sincere effort to comply with Rule of Practice No. 101 (d) or Rule of Practice No. 96 (a), in that they have not set forth with the particularity required in these Rules of Practice, any errors in the findings, or any variations as between the evidence of record and the findings. Therefore, the Commission should not stay its hand in any manner from carrying into effect, within 30 days from the date of the service of the report herein, viz., November 18, 1955, the provision in the last three lines on Sheet 32 and the first two lines on Sheet 33 of its report herein, dated October 17, 1955.

It should also be quite evident to the Commission that [fol. 136] the Utah Commission does not intend to authorize within 30 days from the date of service of November 18, 1955, the increase on Utah intrastate traffic found by the Commission, in its decision of October 17, 1955, and this Commission should forthwith on December 19, 1955, order the respondent railroads to make permanent the increases on Utah intrastate traffic held by it to be reasonable and lawful in its decision of October 17, 1955. The Commission should deny the prayer to vacate the provisions in the last three lines on Sheet 32 and the first two lines on Sheet 33 of its report herein, dated October 17, 1955.

PETITIONERS' PRAYER—PARAGRAPH "B"

For all of the foregoing reasons, the Commission should deny petitioners' prayer that the decision of the Commission be annulled and set aside and the request for rehearing and reconsideration of the issues involved herein:

Respectfully submitted,

Albert R. Bowen
L. W. Hobbs
A. U. Miner
Ernest P. Porter
E. L. Van Dellen
W. H. Fitzpatrick
Attorneys for Respondent Railroads

December 9, 1955

1416 Dodge Street
Omaha 2, Nebraska

[fol. 137] CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by mailing by first-class mail a copy thereof, postage prepaid, properly addressed to each other party.

Dated at Omaha, Nebraska, this 9th day of December, 1955.

W. H. Fitzpatrick
Of Counsel

[fol. 138] PLAINTIFFS' EXHIBIT No. 5

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 9th day of January, A. D. 1956.

No. 31484

UTAH INTRASTATE FREIGHT RATES AND CHARGES

Upon consideration of the record in the above-entitled proceeding, petition of the Utah Citizens Rate Association and Public Service Commission of Utah for reconsideration and rehearing, and the reply on behalf of respondent railroads; and it appearing that substantial and material reasons to warrant granting the petition have not been shown;

It is ordered, That the said petition be, and it is hereby, denied.

By the Commission.

HAROLD D. McCOY
Secretary.

(SEAL)

[fol. 139] PLAINTIFFS' EXHIBIT No. 6

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 8th day of February, A. D. 1956.

No. 31484

UTAH INTRASTATE FREIGHT RATES AND CHARGES

This proceeding having been fully heard and submitted by the parties, and full investigation of the matters and things involved therein having been made, and the Commis-

sion on October 17, 1955, having made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof; and

It appearing; That as set forth in said report and in accordance with the practice in such proceedings, the Commission stated that an order carrying into effect its findings would be entered unless the Commission was notified by the Public Service Commission of Utah within 30 days from November 18, 1955, the date of service of the report, that it would permit the railroad respondents to put into effect the increases in freight rates and charges approved therein for the intrastate transportation of commodities generally except on sugar beets, beet-sugar final molasses, and certain rates on coal, sheep, and cattle, within the State of Utah; that upon request of the Public Service Commission of Utah, the date on or before which it should so notify the Interstate Commerce Commission was postponed to January 20, 1956; that on January 9, 1956, the Commission denied petition of the Utah Citizens Rate Association and Public Service Commission of Utah for reconsideration and rehearing; that no notification has been made by the Public Service Commission of Utah; and the respondent railroads have requested that an order carrying into effect the findings of the Interstate Commerce Commission be entered; and for good cause appearing:

It is ordered, That the respondents in this proceeding, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on March 13, 1956, and thereafter to abstain from practicing the unjust discrimination against interstate commerce found in said report to exist, and to establish on March 13, 1956, upon not less than one day's notice to this Commission and to the general public by filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and thereafter maintain and apply for the intrastate transportation of commodities generally, except on sugar beets, beet-sugar final molasses, and certain rates on coal, sheep, and cattle, as set out in said report, from and to points in the State of Utah, freight rates and charges

which shall be no lower than the approved rates and charges thereon, as provided in said report.

It is further ordered, That this order shall continue in force and effect until the further order of the Commission.

By the Commission.

HAROLD D. McCOY
Secretary

(SEAL)

[fol. 140] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

[Title omitted]

AMENDED CROSS-DESIGNATION AND CERTIFICATION OF RECORD—Filed August 23, 1956

The above named railroad intervenors, having observed that appellants' designation of portions of the transcript of record to be prepared by the Clerk of this Court for transmission to the Clerk of the Supreme Court of the United States omits important and essential portions of the record of proceedings before this Court, respectfully request, pursuant to Rule 12 of the Rules of the Supreme Court of the United States, that the Clerk of this Court include in the transcript of record to be transmitted to the Clerk of the Supreme Court of the United States all portions of the record before this Court not designated in part II of appellants' Notice of Appeal, excluding, however, evidence tendered or admitted at the hearing upon plaintiffs' request for a temporary restraining order as held on March 9, 1956, and excluding the original Cross-Designation and Certification of Record as served on all parties of record on July 17, 1956 and filed herein on July 17, 1956. More particularly, these intervenors [fol. 141] request that such transcript include the Motion of Union Pacific Railroad Company and other Utah railroads to intervene as defendants and Notice of said Motion and the entire transcript of record of the proceedings before the Interstate Commerce Commission, including all of the testimony of all witnesses, and all of the

exhibits received in evidence in the record of proceedings before that Commission and received in evidence by this Court.

Respectfully submitted,

Bryan P. Leverich, Elmer B. Collins, W. H. Fitzpatrick, Ernest P. Porter, Albert R. Bowen, Peter W. Billings, Wood R. Worsley, S. N. Cornwall, A. U. Miner, 10 South Main Street, Salt Lake City, Utah, By Bryan P. Leverich, Attorneys for Intervening Defendant Railroads.

[fol. 142] PROOF OF SERVICE (omitted in printing)

[fol. 143] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

[Title omitted]

PETITION FOR APPEAL—Filed June 21, 1956

The Public Service Commission of Utah and Utah Citizens Rate Association, feeling themselves aggrieved by the Findings of Fact, Conclusions of Law and Decree entered in the above entitled matter by the United States District Court for the District of Utah on the 18th day of June, 1956, and the Opinion in support thereof made and entered on the 23rd day of May, 1956, hereby pray an appeal from said Findings of Fact, Conclusions of Law, Decree and Opinion to the Supreme Court of the United States. In support of this Petition, the petitioners submit herewith their Assignments of Error and their Statement of Jurisdiction on Appeal.

Dated, this 21st day of June, 1956.

E. R. Callister, Attorney General for the State of Utah. By Raymond W. Gee, Deputy Attorney General, Attorneys for Plaintiff, Public Service Commission of Utah.

Calvin L. Rampton, 721 Continental Bank Bldg., Salt Lake City, Utah, Attorney for Plaintiff, Utah Citizens Rate Association.

[fol. 144] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

[Title omitted]

ORDER ALLOWING APPEAL—Filed June 23, 1956

The Public Service Commission of Utah and Utah Citizens Rate Association having filed a Petition for allowance of an appeal to the Supreme Court of the United States from the Findings of Fact, Conclusions of Law and Decree entered in the above entitled matter on the 18th day of June, 1956, and the Opinion in support thereof, and having further filed with said Petition their Assignments of Error and Statement of Jurisdiction, and it further appearing to the Court that said parties are entitled to such appeal under the provisions of Title 28, United States Code, Sec. 1253;

IT IS HEREBY ORDERED that said appeal be and it is hereby allowed.

IT IS FURTHER ORDERED that the appellants' undertaking for costs on appeal be and it is hereby fixed at $300.00.

Signed this 22nd day of June, 1956.

John C. Pickett, Circuit Judge.

[fol. 147] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

[Title omitted]

STATEMENT OF JURISDICTION—Filed June 21, 1956

Come now Public Service Commission of Utah and Utah Citizens Rate Association and in support of their Petition for an allowance of an appeal to the Supreme Court of the United States in the above entitled case, represent

unto the Court that the jurisdiction of said appeal is as follows:

1. The above entitled action was brought by the plaintiffs for the purpose of annulling and setting aside an order of the Interstate Commerce Commission under the provisions of Title 49, U.S.C., Section 17 (9) and Title 28, U.S.C., Sections 1366, 1398, 2284, 2321, 2322, 2323, 2324 and 2325 and pursuant to Title 5, U.S.C., Section 1009. The action thus commenced was required by the statutory provisions above quoted to be heard and determined by a District Court of three judges.

2. After trial of the above entitled action the issues therein were decided adversely to the plaintiffs, and an Order and Decree was made and entered denying the permanent injunction in said case.

3. Title 28, U.S.C., Sec. 1253 provides as follows:

[fol. 148] "Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges. June 25, 1948, c. 646, 62 Stat. 926."

4. There is no provision of law which removes this case from the provisions of the foregoing statutory provision.

E. R. Callister, Attorney General for the State of Utah, By Raymond W. Gee, Deputy Attorney General. Attorneys for Plaintiff, Public Service Commission of Utah.

Calvin L. Rampton, 721 Continental Bank Bldg., Salt Lake City, Utah, Attorney for Plaintiff, Utah Citizens Rate Association.

[fol. 149] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

[Title omitted]

ASSIGNMENT OF ERRORS—Filed June 21, 1956

Come now Public Service Commission of Utah and Utah Citizens Rate Association, and make the following assignment of errors as a basis for their appeal to the Supreme Court from the Findings of Fact, Conclusions of Law, and Decree made and entered in the above entitled case;

1. The Court erred in holding that the Report and Findings of the Interstate Commerce Commission challenged in the above entitled case were supported by substantial evidence.

2. The Court erred in holding that the fact that intrastate and interstate freight shipments of the intervening railroads are handled on the same trains by the same crews, by the same accounting department, and the same traffic department, establishes that all factors bearing upon the reasonableness of intrastate rates and interstate rates are the same.

3. The Court erred in holding that the evidence established that the cost of handling an intrastate shipment was as great, if not greater, than the cost of handling like interstate shipments.

[fol. 150] 4. The Court erred in making the assumption that interstate and intrastate rates were in proper relationship before the increases granted in Ex Parte 175.

5. The Court erred in basing a finding on the fact that the average revenue per ton mile in the State of Utah was lower than the average revenue per ton mile in the Western District and in the Mountain-Pacific States, and in ignoring the fact that Utah traffic predominated in favor of lower costs—lower revenue products of the mines, and in further ignoring the fact that Utah intrastate revenue per ton mile

was shown to be substantially higher than interstate revenue per ton mile on like hauls for like commodities.

6. The court erred in that its decision in effect eliminates state jurisdiction over intrastate rates and requires automatic uniformity of increase in both intrastate and interstate rates on the basis of presumption and matters of common knowledge, i.e.: (a) the presumption that interstate and intrastate rates were in proper balance prior to the increase; and (b) the matter of common knowledge that intrastate and interstate traffic are intermingled on the same trains.

7. The Court erred in refusing to consider the substantial evidence introduced by the plaintiffs in this case, protestants before the Interstate Commerce Commission, detracting from the weight of the evidence of the railroads before the Interstate Commerce Commission.

8. The Court erred in holding that no collateral attack could be made in this proceeding upon the Interstate Commerce Commission Order in Ex Parte 175.

E. R. Callister, Attorney General for the State of Utah, By Raymond W. Gee, Deputy Attorney General, Attorneys for the Plaintiff, Public Service Commission of Utah.

Calvin L. Rampton, 721 Cont'l Bank Building, Salt Lake City, Utah, Attorney for Plaintiff, Utah Citizens Rate Association.

[fol. 151] CLERK'S CERTIFICATE TO FOREGOING TRANSCRIPT
(omitted in printing)

[fol. 152] **Plaintiffs' Exhibit No. 2**

SECRETARY'S CERTIFICATE TO FOLLOWING TRANSCRIPT AND EXHIBITS (omitted in printing)

[fol. 154] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. MC 31484

In the Matter of

UTAH INTRASTATE FREIGHT RATES AND CHARGES.

Transcript of Hearing of May 20, 1954

Senate Lounge Room, State Capital Bldg., Salt Lake City, Utah, Thursday, May 20, 1954.

Met pursuant to notice at 9:30 A.M.

BEFORE: Myron Witters, Examiner.

APPEARANCES:

Keith E. Sohm, 301 State Capital Bldg., Salt Lake City, Utah, appearing for the Utah Public Service Commission.

W. H. Fitzpatrick, 1416 Dodge St., Omaha, Nebraska, and A. U. Miner, 404 Union Pacific Bldg., Salt Lake City, Utah, appearing for Union Pacific Railroad Company, Bamberger Railroad Company, Carbon County Railway Company, et al., Respondents.

T. K. Earley, 1531 Stout St., Denver, Colorado, appearing on behalf of Denver & Rio Grande Western Railroad Company, Respondent.

Albert R. Bowen, 921 Kearns Bldg., Salt Lake City, Utah, [fol. 155] appearing for Southern Pacific Railroad Company, Respondent.

Calvin I. Rampton, 721 Continental Bank Bldg., Salt Lake City, Utah, appearing for Utah Citizens Rate Association, Protestant.

H. H. Ellsworth, 424 Kearns Bldg., Salt Lake City, Utah, appearing for Utah Citizens Rate Association, Protestant.

Waldo A. Gillette, 3326 San Fernando Road, Los Angeles, California, appearing for Monolith Portland Cement Company, Protestant.

B. P. Manley, 709 Tribune Bldg., Salt Lake City, Utah, appearing for Utah Coal Operators Association, Protestant.

T. C. Taylor, 507 Denver National Bldg., Denver, Colorado, appearing for Ideal Cement Company, Protestant.

Miles P. Romney, 918 Kearns Bldg., Salt Lake City, Utah, appearing for Utah Mining Association, Protestant.

[fol. 159] PROCEEDINGS.

Exam. Witters: The case set for hearing this morning is Docket No. 31484, Utah Intrastate Freight Rates and Charges.

Who appears for the Utah Public Service Commission?

Mr. Sohm: Keith E. Sohm, admitted to practice before the Commission, Address #301 State Capitol, Salt Lake City, Utah.

Exam. Witters: And for the railroad respondents?

Mr. Fitzpatrick: Mr. A. U. Miner, #404 Union Pacific Building, Salt Lake City, Utah, and W. H. Fitzpatrick, #1416 Dodge Street, Omaha, Nebraska, both attorneys and admitted to practice before the Interstate Commerce Commission. We are appearing for all respondents, Bamberger Railroad Company, Carbon County Railway Company, The Denver and Rio Grande Western Railroad Company, The Ogden Union Railway and Depot Company, Salt Lake, Garfield and Western Railway Company, Southern Pacific Company, Tooele Valley Railway Company, the Union Pacific Railroad Company, the Utah Railway Company, The Western Pacific Railroad Company.

Mr. Bowen: Albert R. Bowen, #921 Kearns Building, Salt Lake City, Utah, I am admitted to practice before the Commission, appearing on behalf of the Southern Pacific Company.

Mr. Earley: T. K. Earley, #1531 Stout Street, Denver, Colorado, appearing on behalf of the Denver and Rio Grande Western Railroad Company. I am admitted to practice before the Commission.

Exam. Witters: Are there any appearances for the shippers?

Mr. Rampton: Yes: Calvin L. Rampton, #721 Continen-
[fol. 160] tal Bank Building, Salt Lake City, Utah, Attorney at Law, and H. H. Ellsworth, #424 Kearns Building, Salt Lake City, Utah, appearing on behalf of the Utah Citizens Rate Association.

Mr. Gillette: Waldo A. Gillette, #3326 San Fernando Road, Los Angeles, California, appearing on behalf of the Monolith Portland Midwest Company. I am admitted to practice before the Commission.

Mr. Manley: B. P. Manley, #709 Tribune Building, Salt Lake City, Utah, appearing on behalf of the Utah Coal Operators Association.

Mr. Romney: Miles P. Romney, #918 Kearns Building, Salt Lake City, Utah, appearing on behalf of the Utah Mining Association.

Exam. Witters: Any others?

Mr. Taylor: T. C. Taylor, #507 Denver National Building, Denver, Colorado, appearing on behalf of the Ideal Cement Company. I am admitted to practice before the Commission.

Exam. Witters: Any others?

(No response)

Exam. Witters: This is an investigation on the petition of the respondent railroads concerning the intrastate freight rates and charges in the State of Utah, and their relation to the interstate rates. Specifically with respect to the non-application of Ex Parte 175 increases.

The respondent railroads may proceed first.

Mr. Fitzpatrick: I will call Mr. Kroll.

[fol. 161]

HERMAN C. KROLL, Was sworn and testified as follows:

Direct examination.

By Mr. Fitzpatrick:

Q. Will you please state your name?

A. Herman C. Kroll.

Q. What position do you occupy, Mr. Kroll?

A. I am employed as Assistant Manager of the Statistical Bureau, Western Traffic Association.

Q. And how long have you held that position?

A. I have held that position since 1948, although I have been connected with the Bureau since 1940.

Q. And you have frequently testified before state commissions in rate cases?

A. I have.

Q. And also have you frequently testified before the Interstate Commerce Commission in hearings similar to this?

A. Yes, sir.

Q. Will you please state your experience in accounting and statistical matters?

A. Well, as I stated I have been connected with the Statistical Bureau of the Western Traffic Association since 1940, and prior to that time I had eight years experience in connection with the determination of statistics to be compiled, and the methods under which they would be compiled.

Q. Are you acquainted with the issues in this proceeding?

A. I am.

[fol. 162] Q. Have you prepared certain exhibits to discuss and submit in evidence in this case?

A. I have, two.

Q. Mr. Fitzpatrick: May we let Mr. Kroll identify those as we go along?

Exam. Witters: That will be satisfactory.

Mr. Fitzpatrick: All right. I would like to have marked for identification exhibit entitled In Re: 'Utah Intrastate Freight Rates and Charges, Ex Parte 175, as No. 1, No. 2425.

Exam. Witters: It may be so marked.

(Respondents' Exhibit No. 1, Witness Kroll, marked for identification)

Mr. Fitzpatrick: And as Exhibit No. 2 for identification, In Re Utah Intrastate Freight Rates and Charges, Ex Parte 175, No. 2422.

Exam. Witters: It may be so marked.

(Respondents' Exhibit No. 2, Witness Kroll, marked for identification)

Q. Were these exhibits prepared by you and under your direction?

A. They were.

Q. And is the data shown in these two exhibits substantially true and correct?

A. To the best of my knowledge and belief.

Q. Will you please go ahead and explain the exhibits to the Examiner?

[fol. 163] A. The exhibit which has been marked for identification as No. 1 is an eleven by seventeen exhibit bearing the number 2425 in the lower right hand corner. This is an economic exhibit that deals generally with economic conditions in the United States, the Western District, and to the extent possible the State of Utah.

On Page 1 of the exhibit I have set forth a graph in which a comparison is made with the increases in the average revenue per ton mile, the consumers' price index, generally known as the cost of living index, the index of wholesale prices, and the index of prices received by farmers. In this particular instance the comparison is limited to the United States and the Western District for the reason that the various price indices are national figures and are more nearly comparable to the United States figure and the Western District figure.

In connection with this showing it will be noted that the increases which have occurred since 1939, the average revenue per ton mile in the Western District, amounts to 40 percent. With respect to the average revenue per ton mile in the United States the increase has been 52 percent.

This is in comparison to a cost of living increase of 93 percent, an increase in wholesale prices of 120 percent, and an increase in prices received by farmers of 172 percent.

The basic information underlying these lines on the chart will be found on Pages 2, 3, 4 and 6.

[fol. 164] Now I should mention that the chart on Page 1 with respect to the average revenue per ton mile is shown for the year 1953, although the data on Page 6 only goes through 1952. For purposes of your information, the figure which should be at the bottom of Column 8 in the upper part of the page, on Page 6, revenue per ton mile in the Western District for 1953, is 1,431 cents. The figure for Column 9 is 1.478 cents. This produces index numbers for the very bottom of Column 8 of 140 and for Column 9, 152.

The average revenue per ton mile in the State of Utah and in the eleven Mountain Pacific States is not yet available.

Referring again now to Page 5, at the left hand side of the page I have made a chart representing the fluctuation

in the average revenue per ton mile earned in the State of Utah.

When I speak of the average revenue per ton mile in the State of Utah I contemplate in such figures a proportion of the interstate revenue on traffic originating in Utah and terminating elsewhere, the interstate traffic originating outside of the state and terminating in the state, the proportion of the interstate revenue on movements which pass through the state, neither originating or terminating there, plus the revenue on the Utah intrastate traffic.

Again 1939 has been used as 100 in preparing this chart, and by way of explanation the reason for using 1939 is that it is the first full year following the last pre-war rate in-
[fol. 165] crease, namely Ex Parte 123, which became effective during 1938.

The line at the upper portion of the graph on the left hand side of the page labeled current dollars, is the actual revenue per ton mile earned on traffic moving in the State of Utah.

It is indicated by that line that in 1939 the average revenue per ton mile was 0.973. By 1952 it had increased to 1.258 or 29 percent.

The line at the lower portion of that chart, labeled constant dollars, is for the purpose demonstrating what that amount of money will do from the standpoint of its purchasing power. That line indicates that instead of an increase of 29 percent in the fourteen year period, 1939 through 1952, there actually was a decrease of 42 percent. Because from the standpoint of purchasing power the 0.973 which was effective in 1939 dropped to 0.565 in 1952.

For purposes of determining the purchasing power of the dollar in this particular instance, I have used the index of wholesale prices for the reason that railroads generally buy at a wholesale level rather than at a retail level.

At the right hand side of the page I have made a comparison of the actual revenue per ton mile, earned in the State of Utah, with that which was earned in the Western District and the United States.

It is a matter of common knowledge that in the post-war ex parte increases there have been somewhat larger in-
[fol. 166] creases in some instances in the eastern portion

of the United States than were applied in the West. For that reason in 1952 the average revenue per ton mile in the United States was 47 percent higher than it was in 1939.

The average revenue per ton mile in the Western District was 36 percent higher, whereas the average revenue per ton mile in Utah, which is a part of the Western District, showed an increase of only 29 percent.

I believe that it is most probable that one of the reasons why Utah stands at an index of 129, is for the reason that the Ex Parte 175, 15 percent increase, has not been effective.

The details underlying these two charts are also found on Page 6.

On Page 7 of the exhibit I have set forth the income payments to individuals in the State of Utah, in the Western District, and in the United States.

Income payments as reported here represent entrepreneural income with the exception of corporate income. It thereby includes all wages and salaries received by individuals who are working, plus the income earned by individually owned businesses, as well as partnerships. The only exclusion is corporate income.

I call your attention in this particular statement to Column 2. wherein it will be noted that in 1939 individuals in the State of Utah received $243,000,000.00. By 1952 this had increased to $1,069,000,000.00, an increase of 340 per- [fol. 167] cent. This compares with an increase of only 300 percent in the Western District as a whole, and only 262 percent in the United States.

In Columns 5, 6 and 7, the various income payments have been set forth on the basis of a per capita amount. In Column 5 you will see that in 1939 the average income payment to an individual in the State of Utah was $443.00. In 1952 it was $1,450.00, an increase of 227 percent. This compares rather favorably with a 226 percent increase in the Western District as a whole, and 204 percent in the United States. These various data are shown graphically at the right hand side of the page.

On Page 8 I have set forth at the left hand side of the page the various growths in population which have occurred again in the State of Utah, the Western District and the United States.

Here it will be observed that the United States in 1952 compared with 1939 had a population growth of 19 percent. The Western District had a growth of 23 percent, and Utah had a growth of 36 percent.

At the right hand side of the page I have set forth a graph demonstrating the growth in non-agricultural employees. There is a specific reason for making such a showing, and it is this: Quite frequently in the West the claim is made that it is strictly an agricultural area, and somewhat in the nature of a colony to the industrialized East.

It will be noted however that at the right hand side of Page 8 that Utah has shown a growth of almost 29 percent [fol. 168] in non-agricultural employees, the Western District shows a growth of 29 percent, whereas in the United States as a whole, the increase was 30.8 percent. This indicates to me at least that Utah is industrializing relatively as fast as the rest of the country.

The basic information for these charts will be found at the left hand side of Page 9, and at the right hand side of the page I have shown the relative growth.

I would like to correct a statement I made about the graph at the right hand side of Page 8, that is not a graph showing growth, it is a graph showing the percentage of the total population engaged in non-agricultural endeavors. It indicates of course with 28.96 percent in Utah, that the percentage is virtually the same as it is in the Western District and the United States.

The graph with relation to the relative growth of non-agricultural employees is shown at the right hand side of Page 9. Here it is indicated that in the period 1939 to 1952, the non-agricultural employment in the United States has increased 58 percent.

The comparable increase in the Western District is 71 percent, whereas, the increase in the State of Utah is 93 percent. This indicates that relatively speaking Utah is increasing its non-agricultural employment faster than either the Western District of which it is a part, or the United States.

Mr. Fitzpatrick: May I have those last few lines repeated.

(Last few lines repeated by Reporter)

Utah derives substantial amounts of income from the [fol. 169] sale of livestock and its products, as well as agricultural crops.

At the left hand side of Page 10 I have set forth the cash farm income from its various sources. This represents cash farm income to farmers in the State of Utah. In this particular instance however the details are shown only for the years 1946 through 1952.

Without going into a discussion of each and every item of farm income, I refer you to the last line of the table, where it is indicated that in 1946 the cash farm income in Utah was in excess of 136¾ million dollars, whereas in 1952, it was 175¾ million dollars.

The chart at the right hand side of the page is for the purpose of demonstrating graphically the distribution of the cash farm income by its major sources.

Utah is also an important state from the standpoint of mineral production, and information with respect to this industry was shown on Page 11. Although very detailed information is shown in the upper left hand corner of the page, as to the quantity of production and the value, by individual items of mineral production, I call your attention to the chart at the lower portion of the page where I have set forth the value of the mineral production for each of the years 1939 through 1950.

In 1939 mineral extraction in the State of Utah produced 79.3 million dollars, in 1950 it produced almost 230 million dollars, an increase of 190 percent. This is shown graphi- [fol. 170] cally in chart at the extreme right hand side of the page.

With respect to Pages 12 and 13, I have included this information merely for the reason that it is a generally accepted measure of economic well-being. I fully realize that the number of private automobiles and commercial vehicles registered has no particular significance in connection with the level of the freight rates to be assessed by railroads, but as I have stated it is a generally accepted measure of economic well-being, and for that reason it is included here.

That completes my testimony with respect to Exhibit No. 1.

My second exhibit is an 8 by 10½ exhibit, and it bears the number 2422 in the lower right hand corner.

This exhibit which has been marked No. 2 for identification, is more in the nature of a statistical exhibit dealing with operations of railroads, almost exclusively the Class 1 carriers operating in the State of Utah.

On Page 1 of the exhibit I have set forth the details of the operating income account, plus information with respect to the property investment in the property used in producing the transportation service. This information has been shown for each of the years 1948 through 1953.

I believe some explanation is due as to why I begin this showing with 1948. When the carriers appeared before the Interstate Commerce Commission in Ex Parte 168, and before the various state regulatory bodies subsequent to the [fol. 171] ICC decision in that case, the various regulatory bodies were apprised of the operating results of the year 1948. There were also shown some preliminary figures for a small portion of 1949. Ex Parte 175 therefore should be predicated by what has happened since 1948, and for that reason I show that as the first year.

In 1948 the five Class 1 carriers which serve the State of Utah, earned a rate of return of 3.98 percent on their net book investment. There have been fluctuations both up and down, but mostly down since that time, and in 1953 they earned a rate of return of only 3.44 percent.

Now of course there are more than Class 1 carriers parties to the petition, which made this proceeding necessary. The figures of the other than Class 1 carriers are not shown here for the reason that under the Commission's accounting rules they do not keep their figures in exactly the same form as the Class 1 carriers.

I believe however that the situation with respect to the other than Class 1 carriers is not dissimilar from that which is faced by the major railroads.

I should say that with respect to the property investment used in calculating the rate of return on this page that in the light of the comment made by the Interstate Commerce Commission in the Ex Parte 175 case, we have predicated our net book investment on the average of the investment as of the beginning and the end of the year.

[fol. 172] It has been my practice in the past to calculate the rate of return on the basis of investment as of the end of the year, but in view of the Commission's comment with respect thereto, I have predicated it on the basis of the average of the beginning and the end of the year.

I should mention that in Column 7 the Southern Pacific has been included from the standpoint of the inclusion of the leased lines of the Southern Pacific. In that year the Southern Pacific made some change in its method of reporting to the Interstate Commerce Commission, but I can assure you that it does not affect the figures one penny with respect to the property investment, the revenues, the expenses, rents, taxes, or net railway operating income.

Q. This includes the leased lines though?

A. It does.

By Mr. Rampton:

Q. And for the purpose of clarification, Mr. Kroll, the figures still include the entire systemwide figures of the Southern Pacific Raliroad?

A. I wouldn't say the systemwide figures, Mr. Rampton, because it does not include the T. & N. O. the Cotton Belt, the Northwestern Pacific. It includes a few rather small lines such as the San Diego and Arizona Eastern, and several other small lines in the West, which the Southern Pacific has operated for years. I merely wanted to call your attention to that fact because in the figures prior to 1953 it will be found that they represent the Southern [fol. 173] Pacific Company, which does not include these other small railroads.

But as I have said, because of the fact that they have operated these properties for years, their inclusion in the report at this time does not change their revenues or expenses or items of that character. It constitutes really a washout of some of the various dividend and rents paid between companies, which does not affect their operating income.

On Page 2 of the exhibit, I have brought you the latest financial information available, and that is the first three months of 1954, and I make the comparison with the first three months of 1953.

I believe that it is a matter of common knowledge that car-loadings for the past five or six months have shown a decided drop indicating a period of readjustment through which the industry of the United States is presently engaged. But that reduction in carloadings of some, of, 15 or 18 percent, has resulted in a decrease of approximately 14 percent in the operating revenues of the five Class 1 carriers serving the State of Utah.

Along with this drop in revenue the carriers have been able to reduce their operating expenses by 8.6 percent. Now part of the reason that the operating expenses cannot be reduced to the same extent as the revenue is probably caused by passenger service.

It will be noted on Line 3 that the passenger revenues [fol. 174] in the first three months of 1954 were approximately 19 percent less than they were in the corresponding period of 1953. But inasmuch as you still have to have an engineer, a fireman, a conductor, and two brakemen, on every passenger train, regardless of whether it is 50 percent loaded or 100 percent loaded, it is not possible to control your operating expenses to the same relative extent as your revenues vary.

This falling off of revenue in the 1954 period has resulted in a net railway operating income of a little more than $17,000,000.00, whereas, in the corresponding period of 1953 the net railway operating income was more than 23.7 million dollars. In other words, the 1954 N.R.O.I. is 72.75 percent as great as it was in 1953.

Now of course one of the reasons why the percentage decrease is greater with respect to net railway operating income than it is with respect to these other items, is that of course you are proceeding from a much smaller base, 23.7 million dollars with respect to net railway operating income, and over 292 million dollars with respect to operating revenues.

However that fact does not detract from the seriousness of the situation of a 28 percent decrease in net railway operating income.

On Page 3 of the exhibit I have set forth information with respect to the employees, the straight time hours of such employees and the straight time compensation paid by these [fol. 175] five Class 1 carriers serving the State of Utah.

As I stated with respect to Page 1, I used 1948 there because that was the last year for which we had shown figures to the Interstate Commerce Commission and the various state regulatory bodies in Ex Parte 168.

With respect to employees and their compensation however, the Commission was aware of what the situation was in 1948, and they also were aware of the fact that there was going to be a forty hour, five day a week, for non-operating employees commencing September 1, 1949. And on this page I show that in 1948 the average straight time hourly rate was $1.301, and in 1953 it was $1.898; an increase of almost 46 percent.

It has always been my contention that Ex Parte 175 should stand on its own feet, and for that reason I believe the comparison should be made with 1950, which was the first full year following the inception of the forty hour five day week for non-operating employees.

The figures do not show on this page of that comparison, but it should be a comparison of $1.898 with $1.581.

Using 1950 as 100 percent the index for 1951 is 111.13, for 1952 it is 117.52, and for 1953 it is 120.05. In other words, for more than 60 percent of the operating expenses of a railroad there has been an increase in the level of the cost of producing the service of over 20 percent. It is such an increase in cost that the carriers are seeking to off-set by the [fol. 176] 15 percent in Ex Parte 175.

I should call your attention to the fact that the figures here for 1953 do not include the recent settlement with the operating brotherhoods to the extent of a 5 cent an hour increase and three weeks vacation with pay after fifteen years of service. It does not include the cost of living adjustment which was made for non-operating employees several months ago, and of course it does not contemplate the some seven or eight cents in fringe benefits recently recommended by the Presidential Board for non-operating employees.

I believe it is important to say that a one cent an hour increase does not sound like very much—It seems kind of picayunish to even mention it—Until you give consideration to the fact that for every cent an hour increase in wages the payroll costs in the Western District goes up about $13,000,000.00 a year.

Another 30 percent of the carriers operating expenses are represented by expenditures which are for materials and supplies used in producing transportation service. I have shown information with respect to this aspect of a railroads' costs on Page 4. Here for similar reasons that I gave in connection with the employees and their compensation and the base year for the comparison of investment, net railway operating income, etc., I have used July 1949 as my jumping off point.

The index which is published by the Bureau of Railway Economics of the Association of American Railroads is [fol. 177] predicated on a base period 1947 to 1949. These various index numbers are shown in Columns 2, 4 and 6, but in order to demonstrate what has happened since July 1, 1949, I have calculated ratios which are shown in Column 3, 5 and 7. These figures indicate that with respect to materials and supplies, other than fuel, a price level January, 1954, was 24.7 percent higher than it was in July of 1949. The prices for fuel, and that is both coal and petroleum products, showed an increase of 13.7 percent, whereas the weighted average increase of all materials and supplies including fuel, showed an increase of 20.6 percent.

Now inasmuch as I have said that employees' compensation constituted something more than 60 percent of the operating expenses, and materials and supplies approximately another 30 percent, we still have about 8 or 9 percent of the operating expenses to account for. They are made up of items such as depreciation, amortization, insurance, injuries to persons, and other items which do not include elements of either wages or materials and supplies.

Throughout the post-war ex parte increases the carriers have shown tremendous percentage increases in the cost of producing transportation service.

None of the freight rate increases which have been granted by the Interstate Commerce Commission, and the various state regulatory bodies, have equaled the increase in the cost of providing the service, so the question naturally [fol. 178] arises if you didn't get freight rate increases to off-set the cost of producing the service why didn't your earnings just fall out of the bottom of the barrel. Well they did almost for a while. But the difference in the cost

of producing the service from the standpoint of employees wages, materials and supply prices, and the increases granted in freight rates, and passenger rates, has been accounted for by an increased efficiency in the operation of the railroad plant.

On Page 5 of the exhibit I have set forth various indicators as to relative operating efficiency. The information is shown for the year 1939, 1949, 1951 and 1952. In each and every column, two through nine, there is demonstrated a substantial increase in the operating efficiency of the carriers. I point out however that this showing is on the basis of the Western District, but I believe that the five Class 1 carriers that serve the State of Utah are not dissimilar to these carriers in the West as a whole.

There is a very substantial improvement in efficiency, 1952 over 1939, and a marked improvement 1952 over 1949, which is generally the year of the Ex Parte 175 increase. Sight must not be lost however of the fact that a major part of this operating efficiency has been made possible only by substantial expenditures in the nature of capital improvements. By that I mean the purchase of larger and better freightcars, as well as the construction of the diesel electric locomotives.

In an effort to determine as accurately as possible how [fol. 179] much revenue was involved in Docket No. 31484, I issued a questionnaire addressed to the Chief Accounting Officers of the five Class 1 carriers which serve the State of Utah, plus the Bamberger Electric and the Tooele Valley. These chief accounting officers were asked to study all Utah intrastate freight movements which terminated on their railroad in the months of May, August and November, of 1953, and February of 1954. The study was made on a terminating basis for the reason that when you made make it in that manner the terminating carrier reports the entire information. This is of particular importance on interline movements so that the terminating carrier reports the entire revenue rather than merely his division thereof.

In studying these intrastate movements they were required to report to me the actual freight charges assessed and what the freight charges would have been if the full Ex Parte 175 increases had been applied on the intrastate move-

ments. The only commodities which were eliminated from this study were sugar beets and beet sugar final molasses moving to sugar factories.

On the basis of the information reported by these seven railroads it is indicated that if the full Ex Parte 175 increases had been in effect the revenue would have been more than $1,866,000.00 greater than it actually was.

Now in arriving at that annual figure I took the four months reported to me and multiplied it by three, by using the second month in each of the four quarters of the twelve [fol. 180] month's period I believe that you get a representative cross section and a reasonably accurate answer.

The same accounting officers were also asked to study the various switching movements for which a bill was rendered against either the shipper or the receiver of the freight and again it was reported on the basis of the freight charges actually assessed and the charges which would have been assessed if the 175 increases had been applicable.

Again multiplying the four months' figures by three, a loss in excess of $13,000.00 is indicated. On the basis of these two pages it is demonstrated that by reason of the denial of the Ex Parte 175 increases, on the part of the Utah Commission, the carriers are being deprived of approximately $1,850,000.00 a year. I think that probably this figure is somewhat of a understatement for the reason that the carriers—accounting officers—were advised——

Q. Did you say $1,850,000.00?

A. No, I should have said $1,870,000.00, instead of 850. The accounting officers were advised that on movements of commodities which normally received transit privileges, moving to destinations where transit privileges are normally afforded, were to be eliminated. This has the effect of considering all terminations at so-called transit points as being of traffic which is going to be transited and ultimately move out, and of course that isn't so. So that if anything the [fol. 181] figures shown on Page 6 are understatements. That completes my statement with respect to Exhibit No. 2.

Mr. Fitzpatrick: We offer in evidence Exhibits 1 and 2.

Mr. Witters: They are received in evidence.

(Respondents' Exhibits 1 and 2, Witness Kroll, received in evidence)

Mr. Fitzpatrick: Mr. Kroll, are you ready for cross examination?

Mr. Kroll: Yes.

Cross examination.

By Mr. Sohm:

Q. On your Exhibit No. 1, you didn't attempt to make any type of figures on prices received by farmers in Utah, is that correct?

A. Not on an average basis, Mr. Sohm, the only extent to which they are shown is with respect to the cash farm income which is shown on Page 10.

Q. Is there any reason why you didn't include in your chart on Page 1 some sort of a study on prices received by farmers in Utah as compared to the revenue per ton mile in this area, the Western District area?

A. No, there is no particula reason for that showing.

Q. You didn't compile a study on prices received by farmers in the Western District area either?

A. Actually, Mr. Sohm, the Government does not publish such figures so they are not available, and it would have been a study of my own if I had endeavored to make it.

[fol. 182] Q. Well my question was then you didn't make it?

A. I didn't make it, no.

Q. On Pages 7 and 8, your exhibits show then a constant growth in industry in manufacturing in Utah, is that not correct?

A. It shows a relatively greater growth of non-agricultural employees; to the extent that that is indicative of industrialization your statemtn is true.

Q. The likely conclusion from your exhibits, saying that it is due to non-agricultural employment, is indication then that industry manufacturing has grown in Utah?

A. I would think that that is indicated, yes.

Q. Would that tend to increase the number of movements in Utah by the railroads, increase the ton miles that the Railroads move?

A. Well it might and it might not. With respect to the number of ton miles, there has been a substantial increase

in the State of Utah, which will be found in Column 2 on Page 6, in 1939 there were 2,833,000,000 ton miles, and in 1952 there was over 8½ billion, which was an increase of 203 percent.

Q. There is a substantial increase then in density on traffic moving in Utah?

A. Yes.

Q. Then your Exhibit No. 2—the apparent criteria then for greater efficiency or stimulating force for greater efficiency in the railroads is in the pressure of necessity in the fact that costs are going up and that revenue is going down, is that not correct?

[fol. 183] A. I wouldn't say that the revenue is going down, although it has declined in recent months. But the railroads are primarily interested in affording the best possible service that they can for the shippers' dollar, and of course in the post-war period there has been an element of necessity in improving efficienty in order to overcome the increased cost of producing the service, which was not covered by the increases in the rates.

Q. Did I understand you to say that—you wouldn't say then that the revenue has gone down particularly?

A. Only in recent months. I think you will find that demonstrated very conclusively on Page 1.

In 1948 the operating revenues of these five carriers were just a little better than one billion dollars, and in 1953, they were almost a billion and a quarter.

Q. Thank you. The room for increased efficiency is still great is it not, and the railroads will continue to become more efficient will they not?

A. Well the carriers are continuing their efforts to improve their efficiency, but I do believe in my own mind, and of course this is merely my own opinion, that the opportunity for increased efficiency is not as great today as it was prior to the installation of the diesel locomotive.

What I am attempting to say, Mr. Sohm, is this, that there were great economies to be accomplished with the diesel locomotive, but to the extent that the railroads are [fol. 184] almost completely dieselized today, that factor of efficiency and decrease in cost is in the past and cannot be looked for to the same extent in the future.

Q. But there still is room for increased efficiency and there will continue to be?

A. As long as there is room for improvement in the art of providing transportation service there is room for increased efficiency.

Q. Did you include in any of your figures the Bamberger Railroad Company as a first class railway?

A. No, because it is a first class electric line and is not subject to the same accounting classification as the Class 1 steam railroads. The only place where the Bamberger is included is on Pages 6 and 7, of Exhibit No. 2, for the purpose of determining the revenue loss.

Q. It is a Class 1 railroad?

A. It is an electric line.

Q. Well I mean—will you answer my question, is it a Class 1 railroad?

A. I don't know whether it is or not. It is not classified as a Class 1 line haul carrier by the Interstate Commerce Commission.

Q. What is the criteria for a Class 1 railroad by the Interstate Commerce Commission?

A. Average operating revenues in excess of one million dollars a year.

[fol. 185] Q. If I told you that the Bamberger Railroad Company had an average revenue in excess of one million dollars a year, would it be a Class 1 railroad?

A. I don't know whether the Commission makes a distinction in Class 1, 2 and 3, electric lines. I know it is an electric railroad, and as such is reported entirely different than the other carriers.

Q. I was just going on the basis of your statement that the determination is the criteria of the Class 1 railroads if the average revenue is in excess of one million dollars. Now I am asking you if that is the criteria, then the Bamberger Railroad if it made in excess of one million dollars, it would be a Class 1 railroad?

A. The only thing I can say to you, Mr. Sohm, is that in the front of the annual statistics of steam railways of the United States published by the Interstate Commerce Commission, it will say that a Class 1 carrier is one with

revenues in excess of one million dollars a year and you will not find the Bamberger Electric in there.

Q. Well that is what I want to know, it does say that that is the criteria of a Class 1 railroad?

A. A Class 1 steam railroad.

Q. You didn't say that.

A. I did say that.

Q. You said just now the only statement is that the de-
[fol. 186] termination of a Class 1 railroad is if it has revenue in excess of one million dollars.

A. And I also said that you will find that in the front of the book, which is the annual statistics of steam railways of the United States.

Q. Thank you. I see what you mean.

A. I should point out however that when they say steam railroads they include all the diesel electrics, but they do not include the Bamberger.

Q. Thank you very much. That has been very helpful, that is a prime contribution.

A. Very well.

Mr. Sohm: That is all the questions I have.

Mr. Rampton: I would like to ask Mr. Kroll a few questions at this time and then I would like to defer until tomorrow for further cross examination after we have had more time to examine the exhibits, if that is agreeable with you.

Mr. Fitzpatrick: Yes, tomorrow morning will be all right. Will you be ready by tomorrow morning?

Mr. Rampton: Yes. I want to get certain figures right now if I may.

Cross examination.

By Mr. Rampton:

Q. Mr. Kroll, will you turn to your Exhibit No. 2. On Line 1 on that exhibit you list gross property investment. I take it that is only carrier operating property?

[fol. 187] A. It represents, Mr. Rampton, a book investment in road and equipment devoted to transportation service, plus materials, supplies and cash.

Q. That is what I want to get at. Now how did you arrive at your cash working capital requirements?

A. I took the amount shown in Account 708, which is the cash, that excludes however temporary cash investment and special deposits.

Q. Did you make any study to determine whether the railroad has any excess cash on hand that they weren't using?

A. No, I didn't make any study of that for the reason that I don't think that any prudent manager of a railroad would keep excess cash on hand, they would make temporary cash investments.

Q. Mr. Kroll, the ordinary way of stating your cash working capital requirements is to determine the lag between the time you must meet you expenses and the time when you must meet your income, and allowing sufficient cash working capital to carry you through that period, isn't that right?

A. That isn't what I would do.

Q. That is what you would do?

A. That isn't what I would do.

Q. All right. How would you determine the need?

A. I think if I were operating the railroad, and of course you understand that I don't, that I would want to have on hand sufficient cash to be the equivalent of about three [fol. 188] months operating expenses.

Q. Three months operating expenses. Mr. Kroll, the railroads receive their revenue for the most part within ninety-four hours after the service, ninety-six hours after the service, is that correct?

A. Generally speaking, yes.

Q. They have no expenses at all except their prepaid expenses, which would be small, that they have to meet within that time, do they?

A. It all depends on whether a payday falls in between the time the move takes place and the revenue is received.

Q. What is the length of the pay period, weekly or semi-monthly?

A. Generally semi-monthly.

Q. You might possibly have a fifteen day—a portion of

a fifteen day payroll then to handle before you receive the revenues, is that right?

A. That is substantially correct, yes.

Q. Can you tell me any other place where you must meet expenses before the revenues allocable to the same haul are received?

A. Well if I understand your question correctly, Mr. Rampton, of course it would be possible that a payment would be due on some diesel electric locomotive or some freight cars, or a down payment on some new equipment would be required.

Q. Those are capital expenditures aren't they?

A. That is right.

[fol. 189] Q. Do you consider capital expenditures—your need for capital expenditures a consideration to be taken in determining cash working capital?

A. I do.

Q. In other words, it is your position then that the road should meet its capital requirements from its long time net earnings?

A. That is the only way that I know that they are going to meet them. Ultimately they have to be paid for by the earnings of the road.

Q. Ultimately?

A. That is right.

Q. But not immediately, isn't that right?

A. Immediately if that is when the payment is due.

Q. All these roads have debts do they not?

A. Substantial debts.

Q. And most of the capital improvement is finance by debt isn't it?

A. That is correct.

Q. So you don't intend to finance all your capital improvements out of the immediate earnings do you?

A. Well you have got to meet the payments on the equipment. Now if that is debt, that might be spread over fifteen years, and you have got to make the payments when these various payment dates come due.

Q. Are you acquainted with the procedure used by the Federal Communications Commission in regard to the al-

[fol. 190] lowance for cash working capital on telephone utilities?

A. No, I am not.

Q. You are not aware that they are allowed forty-five days expenses as cash working capital?

A. No.

Q. Assuming that is true could we say this, that generally the lag in the receipt of revenues would be much greater in the telephone industry than the railroad industry?

A. In the telephone industry you pay in advance, except on toll charges at least you do in Illinois where I pay a telephone bill.

Q. And if you don't pay in advance generally you would say that my statement was true?

A. Well I think you pay in advance all over.

Q. Mr. Kroll, I want to know how much of this figure of $3,538,000,000.00 roughly is made up of cash working capital?

Exam. Witters: You mean including materials and supplies?

Mr. Rampton: Well cash working capital includes materials and supplies.

A. I can't tell you, I don't have the figures with me.

Q. What is that?

A. I can't tell you, I don't have it. I believe I supplied it to you once before not too long ago.

Q. Will you have those by the morning?

A. Could I?

Q. Yes.

[fol. 191] A. If I called Chicago long distance they probably could get it here by tomorrow morning.

Q. Will you do that?

A. If you insist.

Q. I would like to know how much is made up of cash working capital; I would like to know how much is materials and supplies, I would like to know how many days' expense the cash working capital as included in that figure equals.

Mr. Fitzpatrick: Now before we consent to furnish that, can that be secured readily Mr. Kroll?

The Witness: If Mr. Sohm will make available to me the

reports of the five Class 1 carriers to the Utah Commission I will calculate it myself.

Mr. Sohm: We will make those available.

The Witness: I assume, Mr. Rampton, that one year will be sufficient for your purpose?

Mr. Rampton: That will be all that is necessary. All my questions relate only to the year '53.

The Witness: Okey.

Q. Now Mr. Kroll, would you also in regard to Column 7, '53, break the figures down, if you are able to do it now fine, if you have to do it tomorrow morning, break the figures in that column down as to the five carriers, individual figures for the five carriers.

A. I wouldn't agree to do that overnight, no.

Q. All right. Do you have your working papers with you? [fol. 192] A. No, sir.

Q. Where are they?

A. In Chicago.

Q. Why didn't you bring them with you?

A. Because I didn't think I needed them.

Q. You expected to face cross examination on this exhibit didn't you?

A. Within reason, yes.

Q. You don't regard it as reasonable for us to——

Mr. Fitzpatrick: Mr. Examiner, I believe this is rapidly becoming a matter of argument with the witness. I prefer that the counsel direct questions to the witness.

Mr. Rampton: All right. If the Examiner please, they brought an exhibit in here and have shown a certain amount of figures here, saying that they come from five railroads. On cross examination we are entitled to a breakdown of these as they affect the five railroads for the reason that the percentage of the revenue of each of these five railroads that come from intrastate rates differ greatly, and it would be very revealing to the Commission I believe to show the figures as to each of the railroads and know further the percentage of the total revenue that each of those roads derived from Utah intrastate traffic.

Mr. Fitzpatrick: Mr. Examiner, I believe the proper thing would be to find out if that data has been furnished.

Exam. Witters: That has got to be furnished later, I don't [fol. 193] think it is available at this time.

Mr. Fitzpatrick: In other words, we are here making the showing, and if we don't make the proper showing why that is our business.

Mr. Witters: But you could furnish the information?

Mr. Fitzpatrick: I will have to find out from Mr. Kroll whether he can or not. Can that information be furnished, Mr. Kroll?

The Witness: Column 7 can be broken down to the five individual railroads, yes, but I would not attempt to do it between now and tomorrow morning.

Mr. Rampton: The trouble is, if the Commissioner please, when I get it on those individual railroads we will want additional cross examination on it.

Mr. Fitzpatrick: Well Mr. Examiner, I will say as counsel that we won't undertake to furnish it, unless you direct us to we won't attempt to furnish it.

Exam. Witters: No, I will not ask that it be furnished. The respondents have the burden here, the respondent railroads.

Q. Can you give me the rate of return on that investment for any one of the five carriers for that year?

A. I could probably give you the one you want, the Union Pacific.

Q. I want them all.

A. No, I can't.

Q. Well give me the Union Pacific then?

A. 2.58.

[fol. 194] Q. Do you have the Southern Pacific?

A. No.

Q. Do you have any other than the Union Pacific?

A. No, sir.

Q. Do you have all of the breakdowns to Union Pacific in Column 7?

A. No, but I can give you the breakdown as far as revenues and expenses are concerned, if you want it, on all these railroads.

Q. Let's talk about the Union Pacific now.

Mr. Fitzpatrick: Now you asked for all of them so I guess he is going to give them to you.

Mr. Rampton: Well I can't get them all at once, Mr. Counsel, I would like to talk about them one at a time if you don't mind.

Q. What is the total operating revenue for the Union Pacific for the year '53?

A. $530,024,300.00.

Q. And the total operating expense?

A. $400,427,365.00.

Q. Would you repeat that?

A. $400,627,365.00?

Q. That includes no Federal Income Tax?

A. No, sir, those are operating expenses.

Q. It does not include property tax?

A. No, sir.

Q. Would you give us the tax other than the Federal Income Tax?

Exam. Witters: Is that railway tax accruals?

[fol. 195] Mr. Rampton: I think not. I assume that is includes property tax, doesn't it, Mr. Kroll?

A. Yes, sir, the railway tax accruals include all taxes, payroll taxes, Federanl Income Taxes, ad valorem taxes. The tax accruals exclusive of Federal Income Taxes, are $30,618,443.00.

Q. What are your Federal Income Taxes for the year?

A. $47,018,000.00.

Q. $47,018,000.00?

A. Right.

Q. What do you show as the operating ratio for—well I can compute that—in regard to the Union Pacific do you have your figure as to net property investment that you have shown in regard to the system as a whole?

A. $1,117,089,068.00.

Q. Now I assume that figure includes none of the non-utility property of the Union Pacific?

A. It includes only the investment and transportation property.

Q. Likewise the revenue figure includes no revenue from non-utility properties?

A. That is correct.

Q. Do you know whether or not the income tax shown, as you have given it, includes income tax on revenue from non-utility operations?

A. It does.

Q. To what amount?

[fol. 196] A. About $11,000,000.00.

Q. That is the income tax, that is the amount of the tax, not the income?

A. That is the amount of the tax on the non-operating income, received from oil and gas.

I should say however that the tax accruals as shown on Page 1 of the exhibit are in strict accordance with the Commission's accounting rules.

Q. Well I think we have argued that before.

Do you have all the figures for the Southern Pacific, or can you just give them for the Union Pacific?

A. Everything except the income taxes on non-operating income, they don't have very much of that.

Q. All right. Will you give them to me, starting first with gross property investment?

A. I don't have that.

Q. You have only the operating expenses?

A. Only the revenues, expenses and taxes.

Q. All right. Give me revenue, in this order, revenues, expenses, taxes other than Federal Income, and Federal Income Tax?

A. The revenues are $546,126,794.00.

The operating expenses are $422,014,223.00.

The tax accruals, excluding Federal Income are $34,634,065.00.

The Federal Income Taxes are $26,307,745.00.

Q. Do you have the same figures for the D. & R.G.? I [fol. 197] assume you don't have your investment figures for D. & R.G.?

A. I do not. The revenue is $84,701,140.00.

The operating expenses are $54,939,994.00.

The taxes exclusive of Federal Income Taxes are $5,541,021.00.

The Federal Income Taxes are $9,915,400.00.

Q. Now could you give me with regard to each of those roads the revenue received from intrastate traffic?

A. In 1953 the Union Pacific $8,732,091.00.

The Southern Pacific $109,592.00.

The D. & R.G.W. $5,864,623.00.

Q. Do you have the net railway operating income?

A. The net railway operating income for the Union Pacific is $28,859,926.00.

The Southern Pacific $47,106,187.00.

The D. & R. G. W. $13,095,582.00.

Q. Mr. Kroll, you were present in the 30416 case when Mr. Parr's exhibits relative to the rate of return on the individual roads was put in evidence, were you not?

A. Yes, sir, Exhibit No. 38.

Q. Are you one of those who has been assigned to check that?

A. The office has been assigned to check it, I am not one of them, except to the extent that I am Assistant Manager of the office.

Q. Well have you checked sufficiently so that you know that the figures he introduced are correct?

A. I haven't even read them, Mr. Rampton.

[fol. 198] Q. Will you accept them at this time subject to later check?

A. No, sir.

Q. And you won't furnish me with the figures from your own office?

A. No, rates aren't predicated on individual road showings.

Mr. Rampton: Again I renew my motion that they be required to break down their investment and their return to the individual roads, because of the fact that the operation of the individual roads through this state differs greatly.

Exam. Witters: You can furnish the rate of return of the individual railroads?

The Witness: The rate of return, Mr. Examiner, could be furnished, probably with some difficulty, I could get the net investment, but what Mr. Rampton has asked for, of course he changes his mind every time he asks for it, is a complete breakdown of Column 7. I wouldn't endeavor to do that.

Exam. Witters: We are not talking about that.

Mr. Rampton: I am restricting it now, Mr. Kroll, in the hope that you will comply with what I want.

The Witness: I could furnish by tomorrow morning the net investment, a single figure, for each railroad, and the rate of return.

Mr. Rampton: The figure that you would give would include cash working capital and materials and supplies?

The Witness: Yes, but you have asked me to work out the cash and materials and supplies by tomorrow morning, that I can do here from the annual reports.

[fol. 199] Mr. Rampton: You told me before that you would do that.

The Witness: That is right. That I would endeavor to do myself here rather than get a telegram that long (indicating) with the possibility of error in the figures.

Mr. Rampton: In addition to that you will get us the—your net investment figure?

The Witness: I will.

Mr. Rampton: And this net investment figure by this other computation which you previously agreed to make will be broken done between your railway operating property, materials and supplies, and cash working capital.

The Witness: Well I will get from the office a figure which will add to the $2,842,000,000.00, shown on Page 7, and when you subtract from it the cash, materials and supplies, that I am going to compile here you will have the road and equipment.

Mr. Rampton: I believe that is all that I have right now.

Mr. Fitzpatrick: Is that going to satisfy your request?

Mr. Rampton: I think that is everything he told me he would give me.

Mr. Fitzpatrick: Well it is understood then that Mr. Kroll will have this information by tomorrow, and he can cross examine on it tomorrow.

Exam. Witters: Any further questions at this time?

We will take a ten minute recess.

[fol. 200] (Recess taken)

Exam. Witters: Come to order gentlemen, call your next witness.

Mr. Fitzpatrick: Call Mr. Watson.

G. M. Watson was sworn and testified as follows:

Direct examination.

By Mr. Fitzpatrick:

Q. Will you please state your name, residence and occupation?

A. My name is G. M. Watson, I am Assistant Freight Traffic Manager of the Union Pacific Railroad, at Omaha, Nebraska.

Q. How long have you been employed by the Union Pacific as Assistant Freight Traffic Manager?

A. I have been employed in the Traffic Department of the Union Pacific Railroad at Omaha, for approximately 37 years.

Exam. Witters: Will the parties concede Mr. Watson's traffic qualifications?

Mr. Rampton: We will.

Q. Are you familiar with the issues in this proceeding?

A. I am.

Q. Have you prepared some exhibits for introduction in this proceeding?

A. I have, Mr. Fitzpatrick. I think I have 36 exhibits.

Mr. Fitzpatrick: Now Mr. Examiner, these have been distributed to all parties at the table, and Mr. Watson has prepared a written statement which has also been submitted to all parties—all counsel. At this time with your [fol. 201] permission we can proceed with the reading of the statement and he can identify the exhibits as he comes to them.

Exam. Witters: That is agreeable.

Q. Mr. Watson, the 36 exhibits that you referred to, were they prepared by you or under your direction?

A. They were.

Q. And is the data shown in those 36 exhibits substantially true and correct?

A. To the best of my knowledge they are correct.

Q. Now I wonder if I could have agreement with counsel,

the first seven pages, and the first four lines on Page 8, is a recitation of the history of the various proceedings. I wonder if I could have an agreement with counsel, subject to the approval of the Examiner, that that may be considered as read, and of course they can cross examine on it as if it had been read.

Exam. Witters: Isn't that exactly the same as the history contained in your first exhibit here?

Mr. Fitzpatrick: I think it is, Mr. Examiner, but there may be some change in phraseology, etc.

Mr. Sohm: That would be all right, subject to our check.

Mr. Miner: On the first page then you would have to fill in the exhibit number.

The Witness: There is only one exhibit to fill in and that is No. 3.

[fol. 202] Mr. Fitzpatrick: Of this record.

The Witness: Yes.

Mr. Fitzpatrick: That would have to be filled in on Page 1 wouldn't it?

The Witness: Well Page 3 has got a blank too.

Exam. Witters: Consisting of eight pages.

Mr. Miner: That is right. No. 3 would be inserted also on Page 3, wouldn't it?

Mr. Fitzpatrick: Oh yes.

The Witness: It is the same exhibit on Page 3, you fellows are getting away ahead of me here. It is Exhibit No. 3, and it is shown on the ninth line of Page 3.

(Respondents' Exhibit No. 3, marked for identification.)

Exam. Witters: Well you can proceed from Page 8 then. There is a blank at the top of Page 7, that is No. 3 also, isn't it?

The Witness: No, that will be Exhibit No. 4.

Exam. Witters: Do you wish this put in the transcript?

Mr. Fitzpatrick: Yes.

(Reporter's Note: The part of Mr. Watson's statement, to be copied in as above stipulated, is as follows:)

Mr. Watson: The rail carriers' position in the several increased rate cases instituted subsequent to the close of

World War I has been that discrimination, undue prejudice and preference would result if increases were not applied uniformly on interstate and intrastate traffic. That is also [fol. 203] our position in this proceeding.

At this time I would like to comment upon Exhibit No. 3, consisting of eight pages, titled "History of General Rate Increases and Reductions beginning with General Order No. 28, effective June 25th, 1918."

A review of the general proceedings involving increases and reductions as set forth in that exhibit is rather enlightening in that it reveals:

—1—

Increases in 1918 and 1920 and the reduction in 1922 were uniformly applied to all freight rates and charges, both interstate and intrastate.

—2—

The emergency charges applicable on interstate traffic from January 4th, 1932, to September 30th, 1933, did not apply on sugar beets but did apply on ores and concentrates, beet pulp, molasses, limestone, coal and coke. On Utah intrastate traffic, the emergency charges were allowed only during the period from November 12th, 1932, to March 31st, 1933, and did not apply on ores and concentrates and sugar beets.

—3—

The emergency charges applicable on interstate traffic from April 18th, 1935, to December 31st, 1936, were not applicable on sugar beets and ores and concentrates nor on lime rock where the rate was $1.00 or less per ton. The [fol. 204] emergency charges did apply on beet pulp, molasses and coal and coke. On Utah intrastate traffic, the emergency charges were allowed only during the period January 15th, 1936, to June 30th, 1936, and from July 28th, 1936 to December 31st, 1936, but did not apply on sugar beets, beet pulp, molasses, slack coal, coke, copper, lead, and zinc ores and concentrates.

—4—

The general increases authorized in Ex Parte 123, effective March 28th, 1938, on interstate traffic, were not authorized on coal, coke and iron ore. The Utah Commission approved the increases effective May 27th, 1938, but again excepted sugar beets, molasses, wet beet pulp, lime rock, ores and concentrates in addition to coal and coke.

—5—

The general increases authorized in Ex Parte 148, effective March 18th, 1942, on interstate traffic, were approved in part by the Utah Commission in their decision of April 16th, 1942, in Case No. 2525 but again they excepted sugar beets, beet pulp, lime rock, molasses, ores and concentrates of value not exceeding $25.00 per net ton.

This concludes the history of the general increases and reductions prior to Ex Parte 162 and at this time I would like to point out that in the three 13th Section cases cited in Exhibit No. 3, before this Commission, following Ex Parte 103, 115 and 148 proceedings, we requested of this [fol. 205] Commission that the intrastate rates on certain excepted commodities be increased to the interstate level in order to remove what the rail carriers felt was discrimination, undue prejudice and preference. This Commission so found as to some but not all of the excepted commodities and, as a consequence, the disparity between these two sets of rates as to certain commodities was removed by the carriers voluntarily adjusting the interstate basis of rates downward to the intrastate level of rates.

The Utah Commission in report and order of February 7th, 1947, in its Case No. 2998 dealing with rail carriers' petition for Ex Parte 162 increases (I.C.C. orders dated June 20th, 1946 (264 I.C.C. 695) and December 5th, 1946 (266 I.C.C. 537) denied increases on sugar beets, dry and wet beet pulp, molasses and ore and concentrates (including precipitates, matte, slag, speiss and flue dust) where value is less than $25.00 per net ton and limited the increase on manganese ore to 12 cents per ton.

In addition, as shown in Supplement K-1 to Agent L. E. Kipp's I.C.C. A-3893, the Utah Commission failed to grant

full increases authorized by this Commission in line haul carload rates on commodities described in Items 305, 395, 605, 875, 880, 950, and 965 (when in open equipment,) 975, 1015, 1020, 1025 and 1060 of that tariff.

The Utah Commission's Supplemental Report and Order of February 14th, 1947, in its Case No. 2998, also dealing with rail carriers' petition for Ex Parte 162 increases, [fol. 206] (I.C.C. Orders dated June 20th, 1946, (264 I.C.C. 695) and December 5th, 1946, (266 I.C.C. 537) purported to clarify their original order to the extent of permitting increases in basic freight rates and charges in effect on June 30th, 1946, and prior thereto to December 30th, 1945. This supplemental order also denied increases on the same commodities as did the original order.

The Utah Commission in Amended Order of March 8th, 1947, in its Case No. 2998, also dealing with rail carriers' petition for Ex Parte 162 increases (I.C.C. Orders dated June 20th, 1946 (264 I.C.C. 695) and December 5th, 1946 (266 I.C.C. 537) had the effect of changing the increase on Iron Ore from 12 cents per net ton to 12 cents per ton net or gross as rated.

The Utah Commission in Report and Order in its Case No. 2998 Reopened and Case No. 3168 decided June 18th, 1948, dealing with rail carriers' petition for Ex Parte 162 increases (I.C.C. Orders dated June 20th, 1946 (264 I.C.C. 695) and December 5th, 1946 (266 I.C.C. 537) and Ex Parte 166 First and Second Interim increases (I.C.C. orders dated October 6th, 1947 (269 I.C.C. 33) and December 29th, 1947 (270 I.C.C. 81) denied carriers' application for increases in rates on commodities excepted in Supplemental Order of February 14th, 1947, in Case No. 2998 (Ex Parte 162), and also refused to grant carriers' petition for full 20 percent increases in freight charges as authorized by the Interstate Commerce Commission's orders in Ex Parte [fol. 207] 166 dated October 6, 1947 (269 I.C.C. 33) and December 29, 1947, (270 I.C.C. 81) on the following commodities:

	Increase Granted
Sugar Beets	15%
Wet or Dry Beet Pulp	15%
Lime Rock (ground or unground)	15%

Residual Molasses	15%
Nonferrous Ores and Concentrates (including precipitates, Matte, slag, speiss and flue dust)	None
Coal and Coke	
Rates $1.15 and less per net ton	10 cents per net ton
Rates $1.16 to and including $2.50 per net ton	15 cents per net ton
Rates over $2.50 per net ton	20 cents per net ton

The Utah Commission in Report and Order of December 14th, 1948, in its Case No. 3168, further dealing with rail carriers' petition for Ex Parte 166 Final increases (I.C.C. order dated July 27, 1948 (270 I.C.C. 403) denied rail carriers' application for full increases to the same extent as by its interim order dated June 18th, 1948, and in addition they withheld 50 percent of the maximum increases granted by the I.C.C. on specific commodities.

The Utah Commission in Report and Order of February 28th, 1949, in its Case No. 3168, further dealing with rail carriers' petition for full Ex Parte 166 Final increase [fol. 208] (I.C.C. order dated July 27, 1948 (270 I.C.C. 403) in connection with interstate maximum of 30 cents per net ton and 34 cents per gross ton on Iron Ore authorized application of interstate maximum on intrastate Iron Ore in lieu of 15 cents per net ton and 17 cents per gross ton previously granted.

The Utah Commission in Report and Order of September 30th, 1949, in its Case No. 3355, dealing with rail carriers' petition for Ex Parte 168 Interim and Final increases, (I.C.C. orders dated December 29, 1948 (272 I.C.C. 695) and August 2, 1949 (276 I.C.C. 9), denied rail carriers any increases. This denial resulted in the rail carriers filing a petition with the Interstate Commerce Commission, under Section 13 of the Interstate Commerce Act and hearing was held in Salt Lake City February 25 and 26, 1952. The result of this case is reported in 287 I.C.C. 315.

(Respondents' Exhibit No. 4, marked for identification)

Exhibit No. 4 is a copy of Utah Commission's Report and Order, dated March 18, 1953, authorizing the increases sought by rail carriers 13th Section petition.

In first Ex Parte 175 proceeding, the Interstate Commerce Commission in order dated March 12, 1951 (280 I.C.C. 179) authorized a two percent increase in freight rates and charges in Western Territory, subject to maximum increases on certain commodities. This increase became effective April 4, 1951, on interstate traffic.

[fol. 209] In second Ex Parte 175 proceeding, the Interstate Commerce Commission in order dated August 2, 1951, (281 I.C.C. 557) authorized a six percent increase. This increase applied as a surcharge to the amount of the total freight charge as shown on the freight bill, except as to commodities on which certain maxima increases were authorized. This increase became effective August 28, 1951, in interstate traffic, and was subject to an expiration date of February 28, 1953.

In third Ex Parte 175 proceeding, the Interstate Commerce Commission in order dated April 11, 1952 (284 I.C.C. 589) authorized a 15 percent increase. This increase applies as a surcharge to the amount of the total freight charges as shown by the freight bill, except as to certain commodities on which lesser percentage increase applies and subject also to certain maximum increases. This increase became effective May 2, 1952, on interstate traffic and was subject to an expiration date of February 28, 1954. This expiration date has been extended to December 31, 1955, in I.C.C. Order dated July 29, 1953.

(Reporter's Note: The following was read into the record by Mr. Watson)

The rail carriers in petitions dated June 11, 1951, November 24, 1952 and September 28, 1953, requested the Utah Public Utilities Commission to authorize like increases on Utah intrastate traffic.

Hearings were held on the carriers' petitions on October 29-30, 1951, November 17, 1953, and December 11, 1953. [fol. 210] No order was entered as a result of these hearings until December 14, 1953, when its Order in Case No. 3669 was entered dismissing the carriers' application.

As a result of the Utah Commissions' Order the rail carriers filed with the Interstate Commerce Commission the petition which resulted in the instant proceeding being instituted by the Interstate Commerce Commission.

In this proceeding the rail carriers are seeking an increase in the freight charges on Utah intrastate traffic which will reflect the same increase as authorized by the Interstate Commerce Commission in the Ex Parte 175 proceedings.

The carriers however are not seeking any increase in intrastate rates and charges on sugar beets and beet sugar final molasses moving to sugar factories.

It is not the intention of respondents to present testimony with respect to each individual rate and charge applicable within the State of Utah, but our rate testimony will deal with rates and charges on some of the most important commodities.

(Respondents' Exhibit No. 5, Witness Watson, marked for identification)

Exhibit No. 5——

Exam. Witters: It will be understood these numbers are for identification.

The Witness: Shall I qualify that each time?

Exam. Witters: Yes, if you will.

A. (Continuing) Exhibit No. 5 shows the dates on which [fol. 211] the Ex Parte 175 increases became effective on interstate traffic and in the eleven western states on intrastate traffic.

This exhibit, I believe, is self-explanatory, however, I would like to point out that Utah, together with Idaho and Arizona, are the only states in Mountain Pacific Territory that have failed to grant the Ex Parte 175 increases.

(Respondents' Exhibit No. 6, Witness Watson, marked for identification)

Exhibit No. 6 is a statement showing the number of tons of some important commodities originating in Utah on the D. & R.G.W. and U.P.R.R. during the year 1953. These commodities represent 79.15 percent of the total tons of

carload freight originated by these lines in Utah during the same period.

(Respondents' Exhibit No. 7, Witness Watson, marked for identification)

Exhibit No. 7 is a statement showing the number of intrastate and interstate carload shipments of some of the most important commodities terminating on the Utah rail carriers during the year 1953.

Q. Now, Mr. Watson, on Exhibit No. 7 you have some abbreviations, will you give the record the benefit of what those appreviations mean?

A. In the heading of Exhibit No. 7 I referred to the "Bam" as one railroad, that is the Bamberger Railroad. The "D. & R.G.W." is the Denver and Rio Grande Western [fol. 212] Railroad Company. The "S.L.G. & W." is the Salt Lake-Garfield and Western Railroad. The "S.P." is the Southern Pacific Railroad. The "T.V." is the Tooele Valley Railway. "Utah" is the Utah Railway Company. The "W.P." is the Western Pacific Railway.

By Exam. Witters:

Q. I didn't understand the "T.V." what is it?

A. The Tooele Valley. And for the "U.P." on the heading, that is the Union Pacific Railroad Company.

By Mr. Fitzpatrick:

Q. Now then you use those same abbreviations in connection with your other exhibits do you not Mr. Watson?

A. That is correct.

Q. Thank you. You may go ahead.

A. (Continuing) In order to show distribution of the various commodities, intrastate versus interstate, we have prepared map Exhibits 8 to 24, inclusive, showing destination at which intrastate, interstate or both intrastate and interstate shipments were terminated on Bamberger, D. & R.G.W., S.P., T.V., Utah and WP. during May, August, November, 1953 and February 1954, and on U.P. for the year 1953. Where a circle is shown, one or more intra-

state shipments were terminated at that point. Where an "X" is shown, one or more interstate shipments were terminated at that point. Where there is an "X" in a circle shown, there were one or more intrastate and interstate shipments terminated at that point.

I would like to add at this time that you will notice the explanation of the reference marks on the top of the maps, [fol. 213] they are black, and we have added red x's and red circles and the explanation is the same as for the black x's and circles.

(Respondents' Exhibit No. 8, Witness Watson, marked for identification)

Exhibit No. 8 is a map showing the distribution of cattle and calves, consisting of 456 intrastate cars and 976 interstate cars, examples of which are shown on Exhibit No. 25 for identification. This map shows that there was an intrastate as well as an interstate movement to some destinations in the state.

(Respondents' Exhibit No. 9, Witness Watson, marked for identification)

Exhibit No. 9 is a map showing the distribution of sheep and goats consisting of 2,108 intrastate cars and 773 interstate cars, examples of which are shown on Exhibit No. 26 for identification.

Mr. Fitzpatrick: Now this gentlemen is a five page statement reading—Statement dealing with intrastate rail movement of sheep, double deck.

The Witness: I am going to have to explain that a little bit later when I get to it.

Mr. Fitzpatrick: That is right, just for identification.

A. (Continuing) This map shows that there was an intrastate as well as an interstate movement to some destinations in the state.

(Respondents' Exhibit No. 10, Witness Watson, marked for identification)

[fol. 214] Exhibit No. 10 is a map showing the distribution of iron ore consisting of 58,316 intrastate cars and 80 in-

terstate cars, examples of which are shown on Exhibit No. 27, for identification.

Mr. Fitzpatrick: That gentlemen is a two page exhibit reading at the top: Statement dealing with intrastate and interstate rail movement of iron ores.

A. (Continuing) This map shows that there was an intrastate as well as an interstate movement to some destinations in the state.

(Respondents' Exhibit No. 11, Witness Watson, marked for identification)

Exhibit No. 11 is a map showing the distribution of clay and bentonite consisting of 1,495 intrastate cars and 393 interstate cars, examples of which are shown on Exhibit No. 28 for identification.

Mr. Fitzpatrick: Now that gentlemen is a statement headed—Statement dealing with intrastate and interstate rail movement of clay and bentonite. Proceed, Mr. Watson.

A. (Continuing) This map shows that there was an intrastate as well as an interstate movement to some destinations in the state.

(Respondents' Exhibit No. 12, Witness Watson, marked for identification)

Exhibit No. 12 is a map showing the distribution of gravel and sand consisting of 885 intrastate cars and 165 interstate cars, examples of which are shown on Exhibit No. 29 for identification.

[fol. 215] Mr. Fitzpatrick: That gentlemen is a three page statement headed—Statement dealing with intrastate rail movement of gravel and sand, Nos. etc.

A. (Continuing) This map shows that there was an intrastate as well as an interstate movement to some destinations in the state.

(Respondents' Exhibit No. 13, Witness Watson, marked for identification)

Exhibit No. 13 is a map showing the distribution of stone and rock consisting of 1,533 intrastate cars and 87 interstate

cars, examples of which are shown on Exhibit No. 30 for identification.

Mr. Fitzpatrick: That gentlemen is a one page exhibit headed—Statement dealing with intrastate and interstate rail movement of limerock.

A. (Continuing) This map shows that there was an intrastate as well as an interstate movement to some destinations in the state.

(Respondents' Exhibit No. 14, Witness Watson, marked for identification)

Exhibit No. 14 is a map showing the distribution of gasoline consisting of 1,321 intrastate cars and 73 interstate cars, examples of which are shown on Exhibit No. 31 for identification.

Mr. Fitzpatrick: This gentlemen is a two page statement giving the intrastate and interstate rail movement of gas- [fol. 216] oline. And then you have a single one page statement showing interstate movement of gasoline from Salt Lake City, Utah, that is Page 3, of Exhibit No. 31. Proceed.

A. (Continuing) This map shows that there was an intrastate as well as an interstate movement to some destinations in the state.

(Respondents' Exhibit No. 15, Witness Watson, marked for identification)

Exhibit No. 15 is a map showing the distribution of fuel and road oil consisting of 5,499 intrastate cars and 13 interstate cars, examples of which are shown on Exhibit No. 32 for identification.

Mr. Fitzpatrick: Now Exhibit No. 32 consists of two pages, one setup of two pages dealing with intrastate and interstate rail movement of fuel and road oils, and the third page which should be attached thereto reads—Statement showing interstate movement of fuel oil from Salt Lake City, Utah, etc. Proceed, Mr. Watson.

A. (Continuing) This map shows that there was an intrastate as well as an interstate movement to some destinations in the state.

(Respondents' Exhibit No. 16, Witness Watson, marked for identification)

Exhibit No. 16 is a map showing the distribution of manufactured iron and steel consisting of 900 intrastate [fol. 217] and 1,578 interstate cars, examples of which are shown on Exhibit No. 33, for identification.

Mr. Fitzpatrick: Exhibit No. 33 gentlemen consists of two pages headed—Statement dealing with intrastate and interstate rail movement of manufactured iron and steel.

A. (Continuing) This map shows that there was an intrastate as well as an interstate movement to some destinations in the state.

(Respondents' Exhibit No. 17, Witness Watson, marked for identification)

Exhibit No. 17 is a map showing the distribution of cement consisting of 1,709 intrastate cars and 23 interstate cars, examples of which are shown on Exhibit No. 34 for identification.

Mr. Fitzpatrick: And that gentlemen consists of a statement of three pages headed—Statement dealing with intrastate rail movement of cement, etc.

A. (Continuing) This map shows that there was an intrastate as well as an interstate movement to some destinations in the state.

(Respondents' Exhibit No. 18, Witness Watson, marked for identification)

Exhibit No. 18 is a map showing the distribution of sugar consisting of 323 intrastate cars and 622 interstate cars, examples of which are shown on Exhibit No. 35 for identification.

Mr. Fitzpatrick: Exhibit No. 35 is a one page statement [fol. 218] dealing with intrastate and interstate rail movement of sugar. Go ahead, Mr. Watson.

A. (Continuing) This map shows that there was an intrastate as well as an interstate movement to some destinations in the state.

(Respondents' Exhibit No. 19, Witness Watson, marked for identification)

Exhibit No. 19 is a map showing the distribution of animal and poultry feed consisting of 559 intrastate cars and 528 interstate cars, examples of which are shown on Exhibit No. 36 for identification.

Mr. Fitzpatrick: It doesn't seem to be in our sets, Mr. Watson.

The Witness: Well you will find an exhibit of two pages, headed the movement of beet pulp. That is the exhibit that I am referring to.

Mr. Fitzpatrick: The exhibit you are referring to in No. 19 in speaking of animal and poultry feed is the beet pulp?

The Witness: The only point to point movement that was furnished by the Accounting Departments to the Traffic Departments of the railroads, covered beet pulp.

Mr. Fitzpatrick: I see.

The Witness: On a point to point movement on which I have shown——

Exam. Witters: That would be No. 36 for identification?

Mr. Fitzpatrick: Yes, that will be No. 36, and it is a two [fol. 219] page statement dealing with intrastate rail movement of beet pulp, etc.

A. (Continuing) This map shows that there was an intrastate as well as an interstate movement to some destinations in the state.

(Respondents' Exhibit No. 20, Witness Watson, marked for identification)

Exhibit No. 20 is a map showing the distribution of wheat consisting of 898 intrastate cars and 6,914 interstate cars. This map shows that there was an intrastate as well as an interstate movement to some destinations in the state.

(Respondent's Exhibit No. 21, Witness Watson, marked for identification)

Exhibit No. 21 is a map showing the distribution of coal consisting of 15,123 intrastate cars and 6,898 interstate cars, examples of which are shown on rate exhibit that

will be offered by a later witness. This map shows that there was an intrastate as well as an interstate movement to some destinations in the state.

(Respondents' Exhibit No. 22, Witness Watson, marked for identification)

Exhibit No. 22 is a map showing the distribution of coke consisting of 1,135 intrastate cars and 2,403 interstate cars, examples of which are shown on rate exhibit that will be offered by a later witness. This map shows that there was [fol. 220] an intrastate as well as an interstate movement to some destinations in the state.

(Respondents' Exhibit No. 23, Witness Watson, marked for identification)

Exhibit No. 23 is a map showing the distribution of ores and concentrates consisting of 4,470 intrastate cars and 815 interstate cars, examples of which are shown on rate exhibit that will be offered by a later witness. This map shows there was an intrastate as well as an interstate movement to some destinations in the state.

(Respondents' Exhibit No. 24, Witness Watson, marked for identification)

Exhibit No. 24 is a map showing the distribution of waste materials for remelting consisting of 88 intrastate cars and 201 interstate cars, examples of which are shown on rate exhibit that will be offered by a later witness. This map shows that there was an intrastate as well as an interstate movement to some destinations in the state.

(Respondents' Exhibit No. 36, Witness Watson, marked for identification)

Exhibit No. 36 is a two page statement showing the intrastate and interstate movement of beet pulp from, to, and between points in Utah during the months of May, August and November, 1953, and February 1954. In order to show preference in favor of Utah intrastate shipments covered by Lines 1 to 31, Page 1, inclusive, on which the [fol. 221] Utah Commission failed to authorize the Ex Parte 175 increase, attention is directed to the interstate

shipments shown on Lines 1 to 8, Page 2, on which the Ex Parte 175 increase has been charged.

Exam. Witters: At this time, gentlemen, we will recess until 2 P.M.

(Whereupon at 12 o'clock noon, a recess was taken until 2 P.M. of the same date)

[fol. 222] AFTERNOON SESSION 2 P.M.

Exam. Witters: Come to order. Proceed gentlemen.

G. M. WATSON Upon being recalled, testified as follows:

Direct examination (continued).

By Mr. Fitzpatrick:

Q. Proceed with the explanation of your next exhibit, Mr. Watson?

(Respondents' Exhibit No. 30, Witness Watson, marked for identification)

Exhibit No. 30 is a statement showing intrastate and interstate movement of limerock from, to and between points in Utah during the months of May, August and November, 1953, and February, 1954. In order to show preference in favor of Utah intrastate shipments covered by Lines 1 to 3, inclusive, on which the Utah Commission failed to authorize the Ex Parte 175 increase, attention is directed to the Interstate shipments shown on Lines 4 and 5, on which the Ex Parte 175 increase has been charged.

(Respondents' Exhibit No. 35, Witness Watson, marked for identification)

Exhibit No. 35 is a statement showing intrastate and interstate movement of sugar from, to and between points in Utah during the months of May, August and November, 1953, and February, 1954. In order to show preference in favor of Utah intrastate shipments covered by Lines 1 to 8, inclusive, on which the Utah Commission failed to au-

[fol. 223] thorize the Ex Parte 175 increase, attention is directed to the interstate shipments shown on Lines 9 to 15, on which the Ex Parte 175 increase has been charged.

Mr. Rampton: May I ask a question for clarification at this point?

Exam. Witters: You may.

By Mr. Rampton:

Q. You do propose to take the increase that was granted on refined sugar but not on beets and molasses, is that right?

A. Well I——

Q. I could ask that of counsel probably better than you.

A. We do—I have testified that we do not anticipate taking an increase on sugar beets or beet sugar final molasses moving to and from the sugar factories.

Q. But you will take it on refined sugar?

A. That is correct.

Q. That is what this Exhibit No. 35 refers to?

A. That is right.

(Respondents' Exhibit No. 34, Witness Watson, marked for identification)

Q. Exhibit No. 34 is a three page statement showing intrastate and interstate movement of cement from, to and between points in Utah during the months of May, August, and November, 1953, and February, 1954. In order to show preference in favor of Utah intrastate shipments covered by Lines 1 to 27, Page 1, on which the Utah Commission [fol. 224] failed to authorize the Ex Parte 175 increase, attention is directed to the interstate shipments shown on Lines 1 to 3, Page 2, on which the Ex Parte 175 increase has been charged.

Page 3 shows interstate movement from Devil's Slide, Utah, to destinations in California, Idaho, Nevada and Wyoming, during the year 1953, on which the Ex Parte 175 increase has been charged.

(Respondents' Exhibit No. 31, Witness Watson, marked for identification)

Exhibit No. 31 is a two page statement showing intrastate and interstate movement of gasoline from, to and between points in Utah during the months of May, August and November, 1953, and February, 1954.

In order to show preference in favor of Utah intrastate shipments covered by Lines 1 to 29, Page 1, and Lines 1 to 9, Page 2, inclusive, on which the Utah Commission failed to authorize the Ex Parte 175 increase, attention is directed to the interstate shipments shown on Lines 10 and 11, Page 2, on which the Ex Parte 175 increase has been charged.

Page 3 shows interstate movement for the year 1953 from Salt Lake City to destinations in Idaho, Nevada and Wyoming, on which the Ex Parte 175 increase has been charged.

(Respondents' Exhibit No. 32, Witness Watson, marked for identification)

[fol. 225] Exhibit No. 32 is a two page statement showing intrastate and interstate movement of fuel and road oil from, to and between points in Utah during the months of May, August and November, 1953, and February 1954.

In order to show preference in favor of Utah intrastate shipments covered by Lines 1 to 30, Page 1, and Lines 1 to 13, Page 2, inclusive, on which the Utah Commission failed to authorize the Ex Parte 175 increase, attention is directed to the interstate shipments shown on Line 11, Page 2, on which the Ex Parte 175 increase has been charged.

Mr. Fitzpatrick:

Q. Mr. Watson, I believe that is Line 14, didn't you say Line 11?

A. It should be Line 14 instead of Line 11.

Mr. Rampton: May I ask a question for clarification.

Exam. Witters: Yes.

By Mr. Rampton:

Q. In Column 8,——

Mr. Fitzpatrick: Which page Mr. Rampton?

Mr. Rampton: The same—it is Page 1.

Q. (Continuing) You have the caption, Basis for revenue sought, and then Ex Parte 168, what is the significance of that, what does it show?

A. The first column under the heading of No. 8, the Basis for revenue sought, is the Ex Parte 168 rate which we now consider as being the base rate on which we want to apply the 15 percent increase.

[fol. 226] Q. Now what is Column 5 then?

A. Column 5 is the rate that was charged on the movements shown on the statement.

Q. Column 5 and the first of the two columns 8 will always be the same?

A. There is no difference between Columns 5 and 8, except on the Column No. 8 there is two columns.

Q. Yes, but the first of the——

A. And the one says the same rate as Column No. 5, except it is a plus 15 percent increase, that is the only difference between the two.

Q. So that I can be right in my thinking. None of these shipments that you have shown here go back prior to the time that the Ex Parte 168 was taken in this state, do they?

A. The statement in the heading says that these are shipments that moved during May, August and November, 1953, and February 1954.

Q. When did you take your Ex Parte 168 in the state, do you remember?

A. Yes, we took it as soon as the Utah Commission granted it. It was effective May 1, 1953.

Mr. Rampton: All right, that is all. Just one more question on that.

Q. There is no way that you can find out in the comparison of those two figures whether or not you did take [fol. 227] the 168 on any particular commodity we are talking about?

A. Well, I can just make a general statement. We took the 168 increase in every instance unless we had to meet truck competition and take it away.

Q. Well I am not trying to cross examine now. What

I am trying to find out is an explanation of what I can find out from the face of this exhibit.

A. Well I think the exhibit is self-explanatory, if that is all you want to know about it.

Q. Well there is any way we can tell from the face of these exhibits whether you did take the 168 or not?

A. No. The exhibit doesn't propose to go back to June 30, 1946, and show the basic rate prior to Ex Parte 162, 66 or 68. It is taking the present rate that was in effect during the period shown on the heading here. Shall I go to Page 3 now?

Mr. Fitzpatrick: Yes.

A. Page 3 shows interstate movement for the year of 1953 from Salt Lake City to destinations in Idaho, Nevada and Wyoming, on which the Ex Parte 175 increase has been charged.

(Respondents' Exhibit No. 33, Witness Watson, marked for identification)

Exhibit No. 33 is a two page statement showing intrastate and interstate movement of manufactured iron and steel from, to and between points in Utah, during the months of May, August and November, 1953, and February, 1954.

[fol. 228] In order to show preference in favor of Utah intrastate shipments covered by Lines 1 to 7, inclusive, on which the Utah Commission failed to authorize the Ex Parte 175 increase, attention is directed to the interstate shipments shown on Lines 9 to 25, Page 1, and Lines 1 to 11, Page 2, on which the Ex Parte 175 increase has been charged.

(Respondents' Exhibit No. 27, Witness Watson, marked for identification)

Exhibit No. 27 is a two page statement showing intrastate and interstate movement of iron ore from, to and between points in Utah during the months of May, August and November, 1953, and February, 1954.

In order to show preference in favor of Utah intrastate shipments covered by Lines 1 to 13, Page 1, inclusive, on

which the Utah Commission failed to authorize the Ex Parte 175 increase, attention is directed to the interstate shipments shown on Lines 14 and 15, Page 1, on which the Ex Parte 175 increase has been charged.

Page 2 shows the 1953 interstate movement of iron ore transported from points in Utah to destinations in California, Colorado and east of Chicago on which the Ex Parte 175 increase of 12 percent has been charged.

To illustrate the effect of the Utah intrastate iron ore situation has on other traffic, I wish to refer to P.S.F.B. Docket R-625 of February 15th, 1950, which resulted in the [fol. 229] removal of the Ex Parte 168 increase from the California intrastate rate on iron ore from Ferrum, California, to Kaiser, California. P.S.F.B. Proposal No. 2437 dated January 10th, 1952, requested the elimination of Ex Parte 175 increase in connection with this intrastate traffic and the following was submitted by shipper as justification:

> "Proponent requests rates be exempted from application of Ex Parte 175 increase unless and until such increase is applied on Utah intrastate shipments of iron ore moving to competitor's mill at Geneva, which is same action that was previously taken in connection with the Ex Parte 168 increase."

Mr. Rampton: I move that that last be stricken out as immaterial to these proceedings. Whether or not somebody else feels relief by what is done in Utah has no bearing upon whether our rates should or should not be increased here. I think it is immaterial to the proceeding.

Mr. Fitzpatrick: Well it does show what is happening as a result of the failure of the rates to increase in Utah.

Mr. Sohm: It doesn't show any discrimination though on the part of Utah, it merely shows that some other state is petitioning on something that they just use us as a claim for.

Exam. Witters: Well the objection is overruled.

A. (Continuing) This proposal failed of approval and the California iron ore rates are subject to the Ex Parte 175 increase.

[fol. 230] (Respondents' Exhibit No. 28, Witness Watson, marked for identification)

Exhibit No. 28 is a two page statement showing intrastate and interstate movement of clay and bentonite from, to and between points in Utah during the months of May, August and November, 1953, and February, 1954.

In order to show preference in favor of Utah intrastate shipments covered by Lines 1 to 11, inclusive, on which the Utah Commission failed to authorize the Ex Parte 175 increase, attention is directed to the interstate shipments shown on Lines 12 to 25, Page 1, and Lines 1 to 7, Page 2, on which the Ex Parte 175 increase has been charged.

(Respondents' Exhibit No. 29, Witness Watson, marked for identification)

Exhibit No. 29 is a statement showing intrastate and interstate movement of gravel and sand from, to and between points in Utah during the months of May, August and November, 1953, and February, 1954.

In order to show preference in favor of Utah intrastate shipments covered by Pages 1 and 2 on which the Utah Commission failed to authorize the Ex Parte 175 increase, attention is directed to the interstate shipments shown on Page 3 on which the Ex Parte 175 increase has been charged.

(Respondents' Exhibit No. 26, Witness Watson, marked for identification)

[fol. 231] Exhibit No. 26 is a five page statement showing intrastate and interstate movement of sheep, in double deck, from, to and between points in Utah, during the months of May, August and November, 1953, and February, 1954.

In order to show preference in favor of Utah intrastate shipments covered by Pages 1 to 4, inclusive, on which the Utah Commission failed to authorize the Ex Parte 175 increase, attention is directed to the interstate shipments shown on Lines 1 to 23, Page 5, on which the Ex Parte 175 increase has been charged.

(Respondents' Exhibit No. 25, Witness Watson, marked for identification)

Exhibit No. 25 is a three page statement showing intrastate and interstate movement of cattle from, to and between points in Utah, during the months of May, August and November, 1953, and February, 1954.

In order to show preference in favor of the Utah intrastate shipments covered by Lines 1 to 31, Page 1, and Lines 1 to 15, Page 2, inclusive, on which the Utah Commission failed to authorize the Ex Parte 175 increase, attention is directed to the interstate shipments shown on Lines 1 to 25, Page 3, on which the Ex Parte 175 increase has been charged.

(Respondents' Exhibit No. 37, Witness Watson, marked for identification)

Exhibit No. 37 is a statement showing comparison of [fol. 232] intrastate and interstate class rates. Attention is directed to Line 1 showing the class rates in effect since June 30th, 1946, from Salt Lake City, Utah, to Cache Junction, Utah, a distance of 85 miles, while Line No. 8 shows the class rates in effect on the same dates from Pocatello, Idaho, to Cache Junction, Utah, for an equal haul.

The June 30th, 1946, rates were on the same basis from both Salt Lake City and Pocatello, and, as a result of previous 13th Section Case, ICC Docket 30961, they remained together under Ex Parte 162, 166, and 168, increases. The intrastate rates are presently 15 percent lower than the interstate basis because of the Utah Commission's failure to grant the Ex Parte 175 increase.

(Respondents' Exhibit No. 38, Witness Watson, marked for identification)

Exhibit No. 38 is a statement showing less carload rates on merchandise as described on Pages 194 to 205, inclusive, U. P. Tariff 4100, I.C.C. 5194. These rates were established several years ago for the purpose of meeting truck competition and are predicated on a percentage of the first four class rates.

Border point comparison, shown on this exhibit, reveal that intrastate traffic was subject to the same scale of rates as applied to interstate traffic prior to the effectibe date of Ex Parte 175 interstate increase.

For example, Salt Lake to Portage, Utah, Line 1, under

[fol. 233] Column 5, shows basic rate of 63 cents, while Line 7, under Column 5, shows the same basic rate from Salt Lake City to Woodruff, Idaho.

At Lines 5 and 10, I have shown the present Column A rate of $1.01 from Salt Lake City, Utah, to both Portage, Utah, and Woodruff, Idaho.

The interstate rate to Woodruff, Idaho, is only 3 cents higher than the Ex Parte 168 rate, and the reason this interstate rate does not reflect the full Ex Parte 175 increase is due to the reduction published by the rail carriers to meet the merchandise rates published by Agent R. E. Decker in Intermountain Tariff No. 1, MF-ICC 15.

Rocky Mountain Motor Tariff Bureau's Tariff No. 14, K. Tracy Power's MF-ICC 36, publishes the same merchandise rates as Agent Decker's MF-ICC No. 15; but K. Tracy Power's MF-ICC No. 36 is subject to an increase table that reflects the interstate Ex Parte 175 increase.

In this proceeding, we are seeking authority to increase the rail intrastate merchandise rates to the level of the Ex Parte 168 basis plus the Ex Parte 175 increase.

We, likewise, propose to restore our interstate merchandise rates to the Ex Parte 168 level plus the Ex Parte 175 increase unless we are forced to maintain a lower level to meet competition.

Mr. Fitzpatrick: Mr. Examiner, at this time we offer in evidence Exhibits 3 to 38, inclusive.

Exam. Witters: Without objection they may be received in evidence.

[fol. 234] (Respondents' Exhibits 3 to 38, inclusive, Witness Watson, received in evidence)

Exam. Witters: Cross examine.

Cross examination.

By Mr. Sohm:

Q. Let me clarify this one point in my own mind. Are any of these charges we will take Exhibit No. 26, Line 7, charges as corrected, are those taken from freight bills or is that the rate calculated?

A. Those were—pardon me—are you referring to a specific rate there?

Q. No, Line No. 7 and 8 of the exhibits. Line No. 7 is the same in all of them so it is charges as corrected. I am asking generally was that column, Column No. 7, are computed rates from the tariff, or whether they are actually freight bill charges?

A. Well, Mr. Sohm, the statement shows that there was 69 cars on this particular one, and there was so much money collected. These are actual charges that were shown in the Auditor's accounts as being collected.

Q. They were taken right from the freight bills?

A. That is right.

Q. Now how did you arrive at the points that you have used here, for instance the points that you have used in intrastate traffic. Take Exhibit No. 28 will you please?

A. I have it.

[fol. 235] Q. How did you determine to use the points Henefer to Salt Lake City, or Silver City to Salt Lake City, what I want to know now generally, is what criteria you used to select points to make these shipments?

A. Mr. Vivian, the Manager of the Statistical Bureau in Chicago, put out a questionnaire to all the railroads in Utah, and asked for the point to point movement of this particular exhibit is clay and bentonite. It shows that this is the rail movement during May, August and November, 1953, and February, 1954.

By Exam. Witters:

Q. These are not selected points of origin and destination?

A. These do represent the actual movement for this period shown in the heading of the exhibit.

Q. The total movement isn't it for that period?

A. That is right.

By Mr. Sohm:

Q. For intrastate, the total movement?

A. That is right.

Q. Then how did you determine what points to use in interstate, in other words, what made you determine on Line 12 to use Los Angeles, California, to Salt Lake City, Utah?

A. The questionnaire that was put out by Mr. Vivian to the Accounting Departments of the railroads requested the intrastate movements for the period, and also interstate shipments that terminated in Utah on these particular commodities.

Q. Did you use all of the——

[fol. 236] A. We didn't pick them all, we picked whatever the Auditors—we weren't selecting any——

By Mr. Fitzpatrick:

Q. This is all the shipments intrastate?

A. That is right.

By Mr. Sohm:

Q. Then in all of these exhibits the selection of shipments you have on interstate and intrastate are all of the shipments—for instance interstate that is all of the shipments that are made in the United States on clay and bentonite during the months of May, August and November and February?

A. I can't——

By Mr. Fitzpatrick:

Q. To points in Utah?

By Mr. Sohm:

Q. To points in Utah?

A. Not all of the points, there may have been some interstate shipments that were not shown on here.

Q. To Utah?

A. On these exhibits. We showed all of the intrastate shipments, but there were so many interstate shipments on these different commodities that we didn't show all of the interstate shipments.

Q. Now that is true then, you did not show all of the intersfate shipments to Utah?

A. We did not show all of the interstate shipments that terminated in Utah for the reason that we thought that what examples I have shown on here showed discrimina-

tion. We didn't want to have to type up several pages more of exhibits to show all of the interstate movement. [fol. 237] Q. You had all of those interstate movements before you when you compiled this exhibit then, did you not?

A. Well, it wasn't a pick and choose proposition.

Q. Well how did you select them, that is what I want to know?

A. We didn't pick them out on a mileage basis or anything like that, but we did select, we covered every destination, we did do that. Now maybe we had fifteen or twenty cars coming from different origins, but they terminated at the same point in Utah, we didn't duplicate the origins, we picked out just the destinations.

Q. Now some of these movements, for instance the first, Line 12, had 98 cars moving, and down here on 21 or 20 and 22, 23 and 24, we have one car moving. You didn't use as the basis of your selection the amount of cars running, particularly?

A. We selected the destination.

Q. Well, now again I say——

A. Now here is Nephi, Utah, that you referred to on Line No. 22, of 23, was Garfield, there was only one car there.

Q. Correct.

A. But it was an interstate shipment going to Garfield. We did not pick Garfield from any other point of origin, there may have been more shipments to Garfield from different origins. We were trying to set forth the destinations to which this traffic terminated.

Q. Now my question is why did you use Graniteville [fol. 238] or White Hills to Garfield, rather than some other point, it wasn't because of the number of cars running there was it, because it was only one car in this case?

A. That is right. It happens to be an interstate shipment that you are referring to here, and we have maps prepared here, and we wanted to show that there was an interstate movement to Garfield, one or more, so we just picked Garfield because it was an interstate shipment.

Q. If there was ten interstate shipments moving into

Garfield and you had them there before, you would pick out the one that had the most favorable rate, would you not, that would apply?

A. No, sir. If there was one or a hundred cars that went to Garfield it wouldn't make any difference.

Q. What basis did you use to pick out one out of that ten then?

A. We asked the Accounting Department to supply the movement intrastate and interstate of clay, bentonite, and these other commodities, the intrastate movements as well as interstate movements.

Q. When you refer to the Accounting Department you refer to your own Accounting Department?

A. The Accounting Departments of all of the railroads that serve Utah. We asked for the intrastate and the interstate movement.

Q. Were you responsible for picking these particular points, Graniteville to Nephi, White Hills to Garfield, or your staff?

A. The staff was responsible for picking the points, [fol. 239] but they were instructed to pick the destination point, whether there was a thousand cars moved to that point or one car, it didn't make any difference, this was the destination of the traffic. There may have been four or five cars that went to Ironton, Utah, from different points of origin, that wouldn't make any difference. We are trying to show the terminated traffic in Utah.

Q. I understand that, but I still want to know just what basis you used to select one out of those ten, or that hundred, or that fifty, to put it on this exhibit for that destination. Obviously you can pick a favorable rate to introduce in this exhibit.

A. The staff in Omaha was instructed to show all of the intrastate shipments that moved, and they were instructed to show all the interstate traffic that moved to the specific destination. We didn't duplicate whether the traffic moved from a certain point of origin or not, we worked stictly on a terminated basis.

There may have been a hundred cars going to Salt Lake City, we showed only Los Angeles. There may have been cars that came from the East, but we did cover every destination on an interstate movement.

Q. Would it be possible for you to furnish, for instance, we will pick out Item 22, to furnish all of the cars that moved interstate into Ironton? In other words, you have those records do you not, all of the cars that moved interstate into Ironton?

A. No, I don't have them with me.

[fol. 240] Q. Well, that is obtainable is it not?

A. For the four months shown in the heading of this exhibit you are still talking about clay and bentonite?

Q. Covering the same period of time as this, we just want to be able to check all of those movements and find out how they compare with this one.

A. I don't know whether I can furnish you the information for those particular months, but I have with me a statement prepared by our Accounting Department, it covers the entire movement for the year 1953, on certain commodities.

Q. Check on that then, clay and bentonite.

A. What?

Q. You have then on that clay and bentonite on this Exhibit No. 28, that we are referring to?

A. I am not so sure. You know they are made up according to commodity classification numbers, that is the way the Accounting Department run off their cards on an IBM machine. I do have some clay and bentonite figures here.

Mr. Sohm: In the interest of time may I ask that witness be requested to furnish all of the movements from Pueblo to Ironton during the months May, August and November, 1953, and February, 1954, as a basis of comparison to the one on Exhibit No. 28. If it is possible that he has that we can have it presented tomorrow, if not it will be late filed.

Mr. Fitzpatrick: I will have to consult the witness. Now [fol. 241] what you want is the destinations at Ironton, Utah?

Mr. Sohm: That is right.

Mr. Fitzpatrick: From only Pueblo?

Mr. Sohm: No. All of the points, interstate points, with destinations into Ironton during those months. In all words, all you have here are points—are movements from

Pueblo into Ironton, for these months. I want all of the movements interstate into Ironton.

A. I think I can give you that in a minute here. I can't confine it to the four months, but I can give it to you for the full year 1953, insofar as the Union Pacific is concerned.

Q. All right, give me that as compared to this movement from Pueblo to Ironton, which you have also, don't you?

A. I don't have those figures with me, for the four months, but I do have the full year's movement of these commodities.

Q. Then you have a full year's movement of these commodities from Pueblo to Ironton?

A. That is right.

Q. That will just give us a basis for comparison.

A. That is all you are concerned with now, is Pueblo to Ironton, is that right?

Q. No. If all you have here is the movement from Pueblo to Ironton, I mean the movements for one year's period of time, then give me Ironton to Pueblo to Ironton as well as the other interstate movements to Ironton. In other [fol. 242] words, I can't compare a year's movement with four months' movement.

A. I would be happy to have you duplicate a copy of this year's movement if you would like it.

Q. What is that a movement of. Now does this purport to be all of the movements interstate from—well this is intrastate, all right——

A. Well. Mr. Solm, if you would like to make a specific request for certain figures I will be very happy to take them off of that statement tomorrow and put them in the record.

Q. That is what I am going to do. This particular exhibit here does not have any points from Pueblo to Ironton on it, so that I will have to request that you make that check, and give me those figures if you would.

A. This statement——

Q. I will repeat again what I want. I want a statement of all the movements from interstate, other states, into Ironton, Utah, during these months that you have here listed.

A. Are you confining it to this particular commodity?

Q. This particular commodity, yes.

A. Or will your request run to all of the commodities?

Q. We will make right to this particular commodity, this check.

Mr. Fitzpatrick: It is possible that that is the D. & R.G.W. movement.

A. Well I can't agree to supply it on all the commodities.

Mr. Fitzpatrick: No, no, he said just this one particular item.

[fol. 243] The Witness: I know, that is all he is dealing with right at the moment.

Mr. Fitzpatrick: He said that is all he was going to ask you for.

The Witness: Well then you have it right there.

Mr. Sohm: It isn't there.

Mr. Fitzpatrick: It is probably a D. & R. G. W. movement, to Ironton.

The Witness: From Pueblo.

Mr. Fitzpatrick: Pueblo.

The Witness: Probably a D. & R. G., yes.

Mr. Miner: Do you have your figures with you?

A Voice: They were sent to your office at——

The Witness: Oh, I have them at home, I don't have them here.

A Voice: Well, we haven't had them at all.

Mr. Fitzpatrick: Can we get those here by airmail in the morning? Do you have a duplicate here?

The Witness: Well no, John.

A Voice: Our figures were sent to the Chairman at Omaha.

Mr. Sohm: Well could we have such an exhibit marked as a late filed exhibit and furnished to us as soon as possible.

Mr. Miner: I would like to inquire what the purpose is, what the advantage would be to the Commission or anyone trying to determine the issues of this hearing. I can't see [fol. 244] the purpose that counsel is asking for here.

Mr. Sohm: I will state my purpose, and that is, that

I want to know the basis upon which these points were selected to use them in connection with this exhibit. The witness has admitted that there are many interstate shipments into Ironton, I want to know why he selected this particular interstate shipment, Pueblo to Ironton.

Mr. Miner: If he got all the shipments in the world it wouldn't tell you why he selected this one.

Mr. Sohm: I can see what rates are favorable and what rates are not favorable, and whether he picked the most favorable rates.

The Witness: Mr. Sohm, we didn't select the points that way.

Mr. Sohm: Well, that is what I want to know.

The Witness: We selected it just because it happened to be Ironton, we selected Draper, we selected West Jordan, we selected Garfield, we did not duplicate the destinations regardless of the point of origin.

Mr. Fitzpatrick: I don't think that is clear, could I ask him just one question, if you don't mind?

Mr. Sohm: Very well.

By Mr. Fitzpatrick:

Q. Mr. Watson, do the interstate showings on Exhibit No. 28 reflect all of the destinations to which clay and bentonite—reflect all of the individual destinations to which clay and bentonite, moved in those four months?

[fol. 245] A. That is correct.

Q. In other words, once you had a destination you didn't take any further movements to that destination?

A. We paid no attention to the point of origin, there may have been a hundred cars to Salt Lake City, but we showed Salt Lake just once, we were just bringing out the destinations in Utah.

Mr. Fitzpatrick: Does that answer your question?

Mr. Sohm: I understand that.

By Mr. Sohm:

Q. Now, I renew my request because there is a possibility of selection. If there were a hundred movements into

Ironton, then you may have selected any one of those hundred to use in this exhibit?

A. Well why don't you select Salt Lake City now. I can give it to you, I can't give you Ironton because—I can tell you how many cars terminated at Salt Lake City and where they came from.

Q. All right, we will use Salt Lake City, Line 12.

A. That shows 98 cars.

Q. I suggest that you make this check at another time and be able to present it tomorrow, since you have the data there, and that will save our time.

A. Very well.

Mr. Fitzpatrick: All right, we will mark that then.

A. Do you want to go back to the original request on Ironton?

Q. No. I will not require that.

A. Do you want to take the UP destination as shown there?

[fol. 246] Q. I will accept that. Now one further question. What criteria did you use in selecting the commodities which you have used in these exhibits?

A. We tried to bring forth in this hearing the heavy moving commodities, and we made up rate exhibits on certain ones.

Now on Exhibit No. 6, it shows the total number of tons of important commodities that originate in the State of Utah for the year 1953.

Q. That is Exhibit No. 6?

A. That is right. That represents 79.15 percent of the total number of tons of carload freight that originated in the state.

Q. Do you have one of these comparative exhibits intrastate and interstate on coal, now I am not certain whether I overlooked it or if there isn't one there?

A. I do not.

Q. Is there any reason why you do not make a comparison on coal?

Mr. Fitzpatrick: I don't believe the witness finally answered you on that.

Q. All right. That will be forthcoming.

Mr. Miner: May I make this observation to clarify the situation, Mr. Sohm, I don't know whether you understand exactly what the witness is trying to say here. I think the purport of the exhibit here is to show that there has been a movement of this traffic interstate to these points, that has paid the increase, there has likewise been a movement to these points intrastate which has not paid the [fol. 247] increase, isn't that the purpose of the exhibits, Mr. Watson?

A. Well if it isn't I have wasted a hell of a lot of words.

Mr. Miner: So that the idea in showing these is to show that there is a movement of traffic to this point, that did have to pay the interstate increase, whereas the intrastate movements to these similar points have not. Now I think that the amount of traffic that has moved from other origins would not add to it.

Mr. Sohm: Now I understand. I want to make a cursory check in the other movements in there, and the rate there.

Mr. Miner: Well there may have been a dozen movements from other origins, it would only add to what he has said that there has been interstate movements to these origins that has paid the increase. And likewise the intrastate movements to these destinations, I mean, there have been other movements to these destinations that have paid the interstate increase, but there likewise have been a number of intrastate movements that have not paid the increase, so it doesn't matter whether you have got one or you have got fifty. The amount moving is not the point, the interstate has paid the increase and the intrastate hasn't.

Mr. Sohm: I understand that.

Exam. Witters: Proceed with the cross examination.

Mr. Sohm: I believe that is all my questions.

Mr. Rampton: I have a few questions at this time, and perhaps a few tomorrow morning. I would like to go [fol. 248] through some at this time if I may.

Exam. Witters: Proceed.

Cross examination.

By Mr. Rampton:

Q. In determining on all of your exhibits, or on each of your exhibits from 26 on you made some statement exactly like this or similar to this. In order to show preference in failure of the Utah intrastate shipments we give these examples of shipments on which the Utah Commission has not granted the Ex Parte 175 increase.

Now I want to call your attention to Exhibit No. 26, will you refer to that.

A. I have it, sir.

Q. Now on Page 1 will you refer to Line 30. Do you have it?

A. Refer to what?

Q. Line 30, on Page 1 of your Exhibit No. 26.

A. What page of the testimony is that?

Q. It isn't in your testimony, it is in your exhibit. Page 1 of Exhibit No. 26.

A. I thought you said that I referred to it.

Q. I said will you refer to it.

A. Oh, thank you. That is all right, No. 30, okey.

Q. Will you refer to Line 30?

A. I have it.

Q. Now as I understand it that refers to shipments from [fol. 249] Wahsatch, Utah, to Timpie, Utah, right?

A. That is right.

Q. A distance of 143 miles, is that right?

A. That is correct.

Q. For that shipment of 143 miles you got $64.09 for a carload of sheep, is that right?

A. That is right.

Q. Now will you still hold that place and turn to Page 5, Line 7.

Exam. Witters: That must be an average, isn't it?

A. It is an average for the 72 cars that moved, for that distance. In the heading of the statement it shows that it is a rate per car, it is an average rate for the 72 cars that moved for that distance.

Q. Now will you refer to Line 7 on Page 5.

A. I have it.

Q. Now those are shipments from Montrose, Colorado, to Thompson, Utah, a distance of 151 miles, that is right isn't it?

A. That is right.

Q. In other words, some eight miles farther than the intrastate shipment that we were just talking about. How much did you receive per car for that shipment including your 15 percent increase?

Mr. Fitzpatrick: Well I have it figured out if you will accept my figures.

Mr. Rampton: Yes, sir.

[fol. 250] Mr. Fitzpatrick: $66.59.

Mr. Rampton: $66.59. No, sir, I don't believe I will. I believe I will have to figure that.

A. I think I would too.

Mr. Fitzpatrick: All right. 57.91, 10 percent would be $5.79, wouldn't it, and 5 percent would be half of that.

Mr. Rampton: I just want to check it. $2.89.

The Witness: It sounds like you are putting out a bargain.

Mr. Rampton: $65.59 isn't it, no, your are right, $66.59.

Q. In other words, at the present time for a shorter haul, eight miles shorter haul, intrastate without any increase you are getting $64.09 as against $66.59, isn't that right?

A. That is the situation today.

Q. Now let's take Line 27, Lakeside, Utah, to Wahsatch, Utah.

A. Which page?

Q. That is on Page 1, Line 27. That is 112 miles isn't it?

A. That is right.

Q. You are getting now from Utah shippers intrastate $67.28 per car for that 112 mile shipment aren't you?

A. That is right.

Q. Now let's refer to Line 6 on Page 5.

A. I have it.

Q. You will have to tell me how to pronounce that.

Debeque, Colorado, to Thompson, Utah, that is also 112 [fol. 251] miles, exactly the same distance, isn't it?

A. That is right.

Q. How much are you getting per car for that shipment, including your 15 percent?

Mr. Fitzpatrick: Would you take my word for it? $57.58.

Mr. Rampton: $57.58.

A. We are not getting enough for either one that you are referring here to. If you want to get right down to bare facts.

Q. At any rate, right now, you are getting $10.00 a car more on your intrastate than you on the same distance interstate, aren't you, on that particular shipment?

A. That is right.

Q. And still you are asking for an additional 15 percent?

A. That is right. And if we get an additional 15 percent on feeder sheep, which is shown on this statement, we still won't be able to come out, we will be in the red for hauling the traffic.

Q. Well you are hauling more traffic, your traffic is heavier also on that particular intrastate shipment that I mentioned than it is on your comparable interstate shipment, isn't it?

A. Well the only trouble is the more traffic we handle of that type the more money we lose.

Q. Now take another example there. Will you refer to Line 9, Cedar City, Utah, to Kaysville, Utah, 294 miles, and you are getting $122.06, right?

[fol. 252] A. Are you still on——

Q. Page 1, Line 9.

A. All right.

Q. Am I right on that?

A. Cedar City to Kaysville.

Q. Yes.

A. Yes.

Q. Now refer to Line 9 on Page 5, Aspen, Colorado, to Mounds, Utah, 284 miles. How much are you getting per car on that shipment after you apply your increase?

Exam. Witters: Do you have that, sir?

Mr. Fitzpatrick: Let's see, just a minute I will have it for you. $88.18.

Mr. Rampton: How much?

Mr. Fitzpatrick: $88.18.

Q. So then Mr. Watson, your interstate rate is already—or I should say your intrastate rate is already some 50 percent higher than your interstate rate on a comparable haul, isn't it?

A. Well that is what the figures show.

Q. They are your figures aren't they?

A. Yes.

Q. And they are right?

A. They are self-explanatory, they are in the statement.

Q. Well let's refer to your next——

Mr. Miner: Well now just a moment. I don't want the [fol. 253] record to go on what counsel says here is a comparable rate, there is nothing shown as to their being comparable so far as territory is concerned, or whether they are——

Mr. Rampton: Well, let's go into that for a minute. Your movements of freight are heavier if anything on those particular intrastate movements than they are on the interstate movements, aren't they?

A. I didn't think the purpose of this hearing was to justify the basis of the rates in effect, this is an increased rate hearing and the basis of a local rate in Utah, if you think it is too low or too high, why you should bring up a Utah intrastate case and——

Exam. Witters: Please answer the question.

Q. Will you answer the question. Will you read it, Mr. Reporter.

(Question repeated by Reporter.)

A. He hasn't confined it to any particular commodity, are you still talking about sheep?

Q. Talking about sheep as shown on Exhibit No. 26.

Mr. Fitzpatrick: Well he means the items to which he referred.

Mr. Rampton: Yes, the items to which I referred. The intrastate movement is heavier than the interstate movement, is it not?

A. My Exhibit No. 7 shows the movement intrastate and interstate on sheep. There was a total of 2108 cars intrastate.

Exam. Witters: What page are you reading from, sir?
[fol. 254] A. Page 2 of Exhibit No. 7.

Q. That shows the movement on intrastate considerably heavier, doesn't it? In fact, it is almost about three times as heavy as your interstate movement.

A. It is pretty equal.

Q. What?

A. It is just about three times.

Q. Now let's turn to Exhibit No. 25. Take the bottom line on Page 1 and the bottom line on Page 3. You have a 96 mile interstate haul and a 92 mile intrastate haul, do you not?

A. That is correct.

Q. Your revenue per car from an intrastate haul is $57.13, is it not?

Mr. Fitzpatrick: What line is that?

Mr. Rampton: Line 31.

A. On Line 31 the rate shown from Spanish Fork, Utah, to Ogden, is $57.13 per car, for a haul of 92 miles.

Q. All right. Now let's go over to the 96 mile haul shown from Weston, Idaho, to North Salt Lake, on Line 25, the bottom line on Page 3, that is a four mile longer haul and an interstate haul, what do you receive from that at the present time?

A. $57.59.

Q. In other words, for a slightly shorter haul intrastate, there is a difference now of only 46 cents without you taking any intrastate increase, isn't that correct?
[fol. 255] A. That happens to be the difference of the figures shown on the table.

Q. Let's turn to Exhibit No. 28. In that particular exhibit the longest mileage you have shown for an intrastate haul is 87 miles, isn't that right?

A. That is correct.

Q. And the shortest haul it has shown for an interstate haul is 782 miles.

Mr. Fitzpatrick: No, it is 579.

Q. 579, I beg your pardon. So we can't tell much about the comparison of those two rates can we for those two distances?

A. The only thing you can tell from this exhibit is that there is an interstate movement of clay and bentonite that terminated in points in Utah, on which the 15 percent increase was applied. That is the only thing that this exhibit purports to show.

Q. In other words, all that your entire testimony purports to show is that the railroads are moving freight intrastate on rates to which the 15 percent hasn't applied, isn't that right?

A. That is a hundred percent correct.

Q. And you are not attempting to show, and it doesn't purport to show that any intrastate increase is justified unless we take the position that the rates were equitable before the Ex Parte 175 was applied interstate, isn't that right?

A. The Interstate Commerce Commission in every proceeding——

Q. Will you answer my question. Read him the question, Mr. Reporter.

[fol. 256] A. Well as long as Mr. Rampton is going to be technical about it I would rather have him restate it.

Q. All right, I will restate the question.

Mr. Fitzpatrick: It is in uncertain terms.

Q. I will restate it. I will get at it in another way. YOur exhibit doesn't purport to show, and doesn't show, that any particular intrastate movement of traffic in the State of Utah is currently paying a lower rate than a comparable interstate shipment moving a comparable distance?

A. That is a very broad statement and I can't testify or answer you unless you want to make it a specific point to point rate. There are hundreds of rates in these exhibits, and I can't attempt to justify an intrastate rate

or an interstate rate. All I am trying to bring out here is that Utah traffic is not paying the 15 percent increase and therefore it shows preference to the Utah shippers in preference to the interstate shippers.

Q. We all knew before we came to this hearing didn't we, that Utah wasn't paying the 15 percent on intrastate shipments, there isn't a person in this room that was in doubt on that, was there?

A. Well I don't think there was.

Q. Well then why——

A. I think we have been before the Utah Commission with petitions on several occasions that shouldn't be any doubt, there wasn't any doubt in my mind about it.

Q. The only thing you claim for these four pages of [fol. 257] paper that you have put in here is to establish what we already knew that Utah wasn't paying the 15 percent on intrastate shipments, isn't that correct?

A. That is right. These exhibits——

Mr. Rampton: All right.

Mr. Fitzpatrick: Just a minute now. All right, that is all. I will have some questions on redirect.

A. I thought that question was directed to me, I would like to answer it.

Mr. Fitzpatrick: Go ahead. Complete your answer.

A. He stated our position, that is all there is to it, that is the reason we are here.

Mr. Fitzpatrick: Well the reason for the exhibits is to show the interstate movement on the——

The Witness: They speak for themselves.

Mr. Fitzpatrick: I mean——

Mr. Sohm: I object to counsel explaining the witness' position.

Mr. Fitzpatrick: I am not explaining the witness' position, I am explaining the——

Mr. Sohm: Are we on the record or off the record.

Mr. Fitzpatrick: Getting back to the question. I will take it on redirect at the proper time.

Exam. Witters: Proceed. Is there any other cross at this time?

Mr. Rampton: That is all I have.

[fol. 258] Cross examination.

By Mr. Taylor:

Q. Mr. Watson, on your Exhibit 34, please. You show the rate from Devil's Slide to Price as 29 cents, 195 miles, and only a rate of 37 cents for only 185 miles to Scofield. Does it seem that those rates are properly adjusted?

Mr. Fitzpatrick: Are these intrastate rates you are referring to?

Q. Yes, Price, Utah, and Scofield, Utah, from Devil's Slide.

Mr. Fitzpatrick: The matter of whether those two intrastate rates are properly adjusted is not a matter to be considered in this proceeding.

Mr. Taylor: I think it is.

Mr. Miner: It would seem to me, Mr. Examiner, that Mr. Taylor's question, as well as Mr. Rampton's, seem to proceed on the presupposition that all these rates should be equal on a mileage basis. I think it is something the Commission itself should take judicial knowledge of, and that it never has been so and never intended to be equal on a mileage basis, intrastate or interstate. All they have been attempting to do is to point out some discrepancies on the mileages.

Exam. Witters: He may answer the question.

Mr. Taylor: Do you understand the question?

A. Yes I understand it.

Q. Then on Lines 5 and 6——

Exam. Witters: Did you answer the question?

A. No, I didn't.

[fol. 259] Exam. Witters: There is a question pending.

Mr. Taylor: I beg your pardon. Will you repeat the question, please.

(Question repeated by Reporter.)

A. I can't say whether it is properly adjusted or not, Mr. Taylor. That happens to be the rate that is in effect,

and if the rates weren't properly adjusted on cement out of Devil's Slide, Utah, I know that somebody would have heard from Mr. Taylor previous to this.

Q. All right, Lines 5 and 6, I call your attention there to a 29 cent rate shown to Richfield, Utah, for 237 miles, and to Lead Mine, Utah, 91 miles, the same identical rate. You can find similar situations all through the page. I would like to call your attention to Salt Lake City, Lines 7 and 8. You show a 6 cent rate, and you say that the basis for revenue sought is 6 cents plus 15 percent, is that correct?

A. I believe so.

Q. Doesn't your Tariff 6027-G show that 7 cent rate as not subject to X-175 and expiring now December 31st, 1954?

A. What the tariff shows now is not subject to 175. If we get the 175 increase in Utah there will be a lot of rates that will go up, even though the tariff now shows it is not subject.

Q. Well do you mean that you are going to increase that 6 cent rate contrary to the present tariff publication, providing it isn't subject to X-175?

[fol. 260] A. The present tariff publication isn't a bit controlling because it says that it is not subject to 175 increas, because the Utah Commission has not authorized the increase.

Q. It wasn't necessary for it to say not subject to X-175.

A. Yes, it was, we thought it was insofar as all these truck rates are concern l.

Q. Well isn't that 10( )00 pound minimum rate, a special rate to meet truck competition?

A. I don't want to be committed here on the record that we are going to increase that rate, we are asking for permission to put on the 15 percent increase on all rates. Now if we have to forego it on cement in order to meet truck competition that is something else.

Q. Well you show Ogden, Utah, Lines 13, 14 and 15, you show three different rates, you show a 7 cent rate there, is that rate in effect now?

A. Well I can't say whether the rate is in effect now, but it was in effect during May, August and November, 1953, and February 154.

Q. Well you show it as a basis for the revenue sought.

A. You will notice there are three rates shown there.

Q. That is right. They were minimum weights—the 7 cents is not in effect is it?

A. I don't know.

Q. The 5 cent rate there is in the same category as the 6 [fol. 261] cent to Ogden—to Salt Lake City, is it not?

A. It could be Mr. Taylor, I don't know.

Q. Well anyhow all these rates and distances you got shows a very chaotic adjustment existing in the present Utah intrastate cement rates?

A. You mean with respect to the level of the unreasonably low rates that we have on cement out here in Utah from Devil's Slide, a nickel into Ogden and 6 cents into Salt Lake City.

Q. It could be higher rates just as well as the lower rates.

A. Well, that is all right. They could be high, they could be unreasonable, or otherwise.

Q. Now will you turn to Page 2 please, sir. There you instance interstate movements into Utah from Houston, Texas, Buffington, Indiana, and Navarro, Pennsylvania, is that the same type of cement that is manufactured and sold in Utah?

A. I wouldn't know, Mr. Taylor. We asked the Accounting Department to furnish us a statement of the interstate movement of cement into Utah. He only reported it as cement. Now whether it is a different type of cement I wouldn't know.

Q. Would it be possible for that to be white cement that doesn't compete with ordinary grey Portland cement?

A. I wouldn't know. It is reported as cement. Is white cement any different than other cement?

Q. It costs about three times as much. It doesn't complete with ordinary grey Portland.

[fol. 262] Exam. Witters: The witness said he didn't know.

A. I don't know what kind of cement it was, it was cement however.

Exam. Witters: There is no further purpose in pursuing that.

Q. Now you don't know whether those movements there

show any prejudice of those mills shipping at rates in all cases of more than twice as high as any rate you have instanced in the State of Utah?

Mr. Miner: He said he didn't.

Exam. Witters: He may answer. Do you understand the question?

A. I don't know. I don't understand the question and I don't know whether it should be restated. I don't know what kind of cement it is, I was just trying to——

Q. I don't mind your speaking; but those rates range from 80 cents up to 103¾ cents, they are more than twice as high as any rate instanced on this Page 1. I was just trying to get his idea as to what prejudice if any, that displayed for the account of those shippers.

A. Well Mr. Taylor, it must be a special kind of cement to move that distance. I will admit that. I don't know what kind of cement that is, but it is reported as cement. Here is a little list here of cement, there are about forty different kinds of cement right here on that list, now I don't know what kind moved into Utah.

Q. On Page 3 please.

[fol. 263] Exam. Witters: Did you state what exhibit?

Mr. Taylor: The same exhibit, Exhibit No. 34.

Q. It shows movements from Devil's Slide to some long range points, Pasadena, California, here, the first one that is listed on there, at a 60 cent rate. Just what is the object of that page please?

A. The object of this page, Mr. Taylor, was to show that there is an interstate movement of cement out of Devil's Slide, Utah, into Nevada, Wyoming and California.

Q. Well now you show those rates subject to the 15 per cent increase in addition to the actual rate figures shown, just who does that preference or prejudice?

A. Well it prejudices people that ship cement from Wyoming or some other spot into Utah on interstate traffic.

Q. Well you haven't shown the movement from Wyoming into Utah on your exhibits.

A. If there had been a movement I would have showed it.

Q. Well you didn't show any so I assume there wasn't any?

A. That is correct.

Q. Well this Pasadena, California, 60 cent rate, does Wyoming ship to Pasadena, California?

A. I don't know.

Q. Do you know where Pasadena is located in California?

A. Very definitely.

Q. Would you mind telling us where?

[fol. 264] A. Well it is just a little bit outside of Los Angeles.

Q. About twelve miles. And isn't right in the midst of a block of some four or five cement mills?

A. It is a little south for the cement mills. I don't think the cement mills are that close to Pasadena.

Q. You mean not within 861 miles of Pasadena?

A. Oh no, I thought you meant between Pasadena and Los Angeles. You said it was in the midst of——

Q. I just want to find out who is preferenced and who is prejudiced by these long range shipments that you show from Utah to interstate destinations?

A. Well the Utah people have the advantage that they don't have to pay the 15 percent increase, whereas these interstate shipments they are subject to the 15 percent, that is all I am trying to bring out.

Q. We admit that there is no 15 percent tacked onto cement in Utah now. Does that preference or prejudice any shipper of cement or receiver of cement?

A. I think it does.

Q. Well just give us an instance of it?

A. Well I made an exhibit here that shows a lot of points there, interstate and intrestate movements. I can't go any further than that.

Q. But you can't name a single mill or person that is preferenced or prejudiced by this page of this exhibit?

[fol. 265] A. Well there happens to be a gentleman here that is Traffic Manager of a cement plant in the State of Wyoming, that may be able to answer that question.

Q. But you don't know?

A. Mr. Waldo Gillette.

Q. But you yourself don't know?

A. No, I don't.

Mr. Taylor: Mr. Examiner, I object to Pages 2 and 3 of

this exhibit, it is irrelevant and immaterial, and has no probative value in this proceeding.

Exam. Witters: The objection is overruled.

Mr. Taylor: That is all.

Mr. Manley: Mr. Examiner, I would like to ask Mr. Watson a question or two if I may.

Exam. Witters: Certainly.

Cross-examination.

By Mr. Manley:

Q. In your testimony on Page 13, Paragraph 2, is a map showing the distribution of coal consisting of 15,123 intrastate cars, and 6,898 interstate cars, do I understand from that that the 6,898 moved from other states into the State of Utah? Is that what you mean by that statement?

A. That is correct.

Q. Can you name those states from which they were shipped, can you name the number of cars respectively from each of those states?

[Tol. 266] A. I don't know whether I can. I can do it for the account of our own line the Union Pacific, I don't know whether I have it for all——

Q. Well this exhibit takes care of all cars does it not, including the Union Pacific and the Rio Grande?

A. That is right. But I don't have the point to point movements with me for all the other lines though. I do have it for the Union Pacific.

Q. But you must have had these figures in the beginning to make an accounting of them?

A. Oh yes, I have got them at home, I didn't carry them with me.

Q. Well we want to have them here, Mr. Watson, if you please. Would you endeavor to furnish that or will some other witness furnish it?

A. Mr. Early I believe will supply you with the details of the coal traffic.

Q. It is possible that Mr. Early may say I have the Denver & Rio Grande. I want the whole matter from one of you gentlemen or both of you.

A. Are you making a request now for a point to point movement, for a certain period?

Q. Yes, sir, for the year 1953.

A. I am sorry, I can't supply it.

By Exam. Witters:

Q. This figure of 6,898 is all of the interstate movements to and from Utah?

[fol. 267] A. That is right.

Mr. Manley: Mr. Examiner, it doesn't state for any period whatsoever in this writing of Mr. Watson's, whether it is a year or a month or what.

By Exam. Witters:

Q. What period is covered?

A. It is for the entire year of 1953, so far as the Union Pacific is concerned, and for the Rio Grande I think it is for a four month's period.

Mr. Miner: I think the Exhibit No. 21 so indicates, doesn't it Mr. Manley.

Q. I am trying to get from Mr. Watson—you say that 6,898 cars of coal was all for the year 1953, all the coal for 1953, that came *intrastate* over the Union Pacific. Did I understand you to say that?

A. I have an exhibit here, No. 7 I believe, that shows the period for which the coal tonnage—Exhibit No. 7, Mr. Manley, shows the coal movement for all of the Utah rail carriers for the months of May, August and November, 1953, and February, 1954, and for the Union Pacific for the full year of 1953. They are tabulated on here, segregated between intrastate and interstate.

Q. Does it show from what states they came?

A. It does not, sir.

Q. That is the information that I require, sir, and I am requesting it.

A. Mr. Early I am sure will put in such an exhibit.

[fol. 268] Q. Will Mr. Early put in such an exhibit?

Mr. Early: Do you want me to answer it?

Mr. Manley: Somebody has got to answer it.

Mr. Early: I will say yes.

Mr. Manley: And would I have the complete information as to the amount of tonnage that moved interstate, coal moving interstate into Utah from other states, and the quantity that moved from each of those states respectively?

Mr. Early: Yes.

Mr. Manley: Okey. The period 1953, the four months of the year 1953, doesn't mean anything in my record. I request, sir, that I get this matter for the full year of 1953.

Mr. Fitzpatrick: Mr. Examiner, the purpose of the exhibits as I understand, the purpose of showing discrimination has been prepared for four months on certain lines, and the Union Pacific has the information for a year. Now that is all of the information that is available.

Mr. Manley: Mr. Examiner, the year—the months of May, August and November and February mean nothing, by the way of computation. There are other months in which coal was shipped and I would like to know the whole calendar year. The railroads have that information just as well as they have it for four months. There is nothing in any coal record that you can compare that with. I request that I get the full year of 1953 from the Union Pacific and from the Denver & Rio Grande, or any other railroad.

[fol. 269] Mr. Fitzpatrick: Off the record for a minute.

Exam. Witters: Off the record.

(Discussion off the record)

Exam. Witters: On the record.

Mr. Fitzpatrick: The information Mr. Earley assures me for all the railroads in Utah can be furnished for the four months' period, that will show the states of origin, is that right, Mr. Earley?

Mr. Earley: Yes.

Mr. Fitzpatrick: But it can't be furnished for the year on the Union Pacific because it has been taken on an interline basis—interstate-interline, and that doesn't go back to the state of origin. It shows that it came onto the Union Pacific interstate and that is all the record shows, so we will not be able to furnish it for the full year of 1953. Mr.

Earley will have that information for the four months' period and that is the best we can do.

Mr. Manley: Mr. Examiner, the four months' period is not sufficient. We want the entire year of 1953. The railroads say they can't furnish it. However it seems that they can furnish all other sorts of information, except something that is applicable.

Mr. Fitzpatrick: Mr. Examiner, it is our responsibility to make our case. We are willing to give that information and go as far as we can in cooperating with the information [fol. 270] we have, but I will have to say that we won't be able to furnish the other information for the full year for 1953 for each of those roads.

Mr. Manley: Mr. Examiner——

Mr. Fitzpatrick: It would take an interline way bill study.

Mr. Manley: Mr. Examiner, coal moves by the Union Pacific practicezelly every month of the year from these out of state origins into this state, and why select any four months' period, if they can do it for four months they can do it for twelve just as well. It is not a seasonal thing, the thing moves all the time.

Exam. Witters: Well the burden is on the railroad respondents here to make their case and if they fail to do this it is their responsibility.

Mr. Miner: These months are taken as representative months, one each quarter, and every shipper, every commodity could require the same thing.

The Witness: Well Mr. Examiner, insofar as the Union Pacific is concerned on Exhibit No. 7 it shows the full year's movement for 1953 on coal, the intrastate and interstate. It is not shown there from point to point but it is segregated. There is the total year's movement there.

Exam. Witters: Can you furnish this information, Mr. Earley for the D. & R.G.W.?

Mr. Earley: Yes.

Mr. Fitzpatrick: He can for all the railroads.

[fol. 271] Exam. Witters: Oh yes. When can you furnish that, Mr. Early?

Mr. Early: I am going to introduce it as testimony in this hearing.

Exam. Witters: Very well.

Mr. Manley: This Exhibit No. 7 is not sufficiently involved. I reiterate my request for the entire year of 1953, and ask for coal that originates in other states and shipped into the State of Utah.

Exam. Witters: Well I will not make that request.

Mr. Manley: You will not make it.

Exam. Witters: I will not make it.

Mr. Manley: Then you are restricting it to this paper or whatever can be dug out by cross examination?

Exam. Witters: No, I don't restrict it.

Mr. Manley: Thank you, sir.

The Witness: It is the carriers' responsibility.

Mr. Manley: The four months chosen by them as being suitable months, and then should they multiply it by three it brings us no results, the result is absolutely wrong. I have checked it with previous records for that state. It doesn't follow.

The Witness: The figures on my exhibit No. 7 which purports to show the movement for the four months' period of other railroads than the Union Pacific are not multiplied by three. They are representative.

Mr. Manley: In many cases that is how you arrive at the [fol. 272] year, you multiply them by three.

The Witness: I don't show it as a year's movement, it is qualified as four months for the accounts of the other lines.

Exam. Witters: We will recess at this time.

(Recess taken)

Exam. Witters: Back on the record.

Any redirect examination?

Mr. Fitzpatrick: Nothing further.

Exam. Witters: You may be excused.

(Witness excused)

(Protestants' Exhibit No. 39, Attorney Fitzpatrick marked for identification)

WALDO A. GILLETTE was sworn and testified as follows:

Direct examination.

My name is Waldo A. Gillette. I am Director or Public Relations and Traffic Manager for the Monolith Portland Midwest Company with a cement plant at Laramie, Wyoming; also, the Monolith Portland Cement Company with a cement plant at Monolith, California. I am also a member of the Board of Directors of the Monolith Portland Cement Company.

I am a graduate of Harvard, where I majored in Economics. I am admitted to practice before the Interstate Commerce Commission and am a member of the Society of Automotive Engineers.

[fol. 273] We have appeared before the Interstate Commerce Commission in each of the Ex Parte Hearings, 162 to date.

In each of the Ex Parte revenue case increases during the past decade, this commission has requested the carriers to reestablish disturbed relationships.

This Commission specifically stated at Page 437 of 270 I.C.C. in its findings concerning intrastate rates that the authorized increase presupposes "—that generally similar increases will be permitted by State authority on intrastate traffic, or may become effective otherwise."

One of the greatest economic advantages in the United States is the fact that there are no economic barriers between the various States. If we will contrast this situation with the situation in Europe, for example, where there are tariff or economic barriers between each of the different countries, it can be seen what a great advantage is present in the United States where these economic or tariff barriers between States do not exist.

When a State fails to keep its intrastate rates in line with the interstate rates to the same destinations, a situation then arises where that particular State has raised an economic or a tariff barrier against the interstate shipper in favor of the intrastate shipper.

Located in the sparsely settled State of Wyoming, as we are, our markets are not within the State of Wyoming but [fol. 274] within many of the surrounding States. It is

therefore imperative that we maintain our relationship in competing with cement plants in all of the different States in our marketing area. For that reason, it is important to us that when an ex parte increase such as was granted by the I.C.C. on cement under Ex Parte 175, that a similar ex parte increase be granted the carriers within the State of Utah.

The Monolith Portland Midwest Company cement plant is located at Laramie, Wyoming.

I have checked back through our records as far as 1937 and find that from 1937 through 1945 we shipped an average of 1,640 tons, or 8,610 barrels, per year into the State of Utah.

Our records show that no shipments have been made into Utah since 1948. The shipments which were made in 1947 and 1948 were made because of the shortage of cement.

Shortage in the area has disappeared. We are now completely shut out of the market in Utah because of the several percentage increases.

It is our position that we, as a shipper, have the right to choose our market, and that unnatural and unwarranted barriers are prejudicial. (Increases in Tennessee, 272 I.C.C. 625 (643).)

These interstate increases have so distorted our relationship with the mills at Devils Slide and Salt Lake City, Utah, that Monolith has lost its entire Utah market.

[fol. 275] Our sales during the period 1937 to 1945 exceeded 1,640 tons a year.

This tonnage far exceeded the tonnage involved in an Arizona discrimination case arising out of the loss of market and damage to a Colorado shipper in the case reported 255—I.C.C.—461.

The Interstate Commerce Commission has always recognized the necessity of maintaining relationships upon cement.

The most concise statement, I believe, is found in Ex Parte 148, proceeding, 248, I.C.C. at 602:

> "The highly competitive conditions in the cement industry are well known. The freight rate is from 25 to 33.33 per cent of the delivered cost. A slight difference per barrel may control a sale, and a one cent increase

per 100 pounds in the freight rate is equivalent to 3.8 cents per barrel. Cement is essentially a short-haul commodity. The greatest density of movement in the East is for distances of 135 to 150 miles, and in the West up to 200 miles. The cement tonnage is important to the railroads, the revenues received therefrom in 1940 approximating $55,000,000.00. Maintenance of the present relations is desired because any widening of the differences would divert tonnage from higher-rates to lower-rates producing points. The one cent maximum would preserve existing relations on the short-haul traffic, and, in the main, relations for the long hauls."

[fol. 276] The Interstate Commerce Commission, in granting Ex Parte 166 to 175 increases, admonished the carriers to reconsider rate relationships when authorizing the carriers to make effective percentage increases.

The long-haul shipper is an important factor in the welfare of the rail carriers. The fact that Laramie no longer ships into Utah has had not only an adverse effect on the cement shipper at Laramie, but on the carrier itself, as those shipments from Laramie are now displaced by short-haul lower rates which, in fact, decrease the carriers' net revenue when compared with long hauls from Laramie.

Our Page No. six is a Map showing the location of the Monolith mill at Laramie, Wyoming.

Since I became Traffic Manager of this Company in 1929, I have annually, or more often, made trips via railroad or automobile to the areas serviced by the cement produced at our mill and these competing mills.

The rail transportation conditions have not substantially changed in any respect during that time except to the extent that greater efficiency has been attained by the railroads in motive power, for example, dieselization, automatic central traffic control and length and speed of trains.

The Laramie plant investment was made in reliance upon the establishment of the relationship existing before the ex parte increases.

[fol. 277] My more than twenty years study of transportation conditions in this and many proceedings before this Commission causes me to state that there is no justification

for a change in relationship on the basis of changed transportation conditions.

Our Map on Page No. six, I believe, is adequate to graphically demonstrate this to you.

Transportation conditions were found to be similar in Montana, North and South Dakota areas in Docket 16,586 in the Decision of June 28, 1927, reported 129—I.C.C.—107.

No decision except Decision 30961 has come to my attention involving transportation conditions in the territory of Laramie, and West, including Eastern Utah.

Based upon my observations of the mountainous Montana and Black Hills, Dakota areas, I state that the transcontinental main line rail movement from Laramie West to Provo, Salt Lake City and Ogden over the flat, plateau Laramie, Wyoming to Ogden is more favorable, transportation conditions considered.

Our Page No. seven is a statement showing the rate to Ogden, Salt Lake City and Provo, Utah from the origin point Laramie, Devils Slide and Salt Lake City. This is self-explanatory and shows the base rates compared to the present rates.

My Page No. eight is a statement showing relationships between Laramie and Devils Slide to these points under the base rates and under the rates as they are at the present time.

I would serve no useful purpose and only burden this [fol. 278] record, in my opinion, to prepare and submit detailed rates to every flag station or town, and mileages, populations, et cetera. These are the principal destinations.

The distortions of our rate relationships are demonstrated at these points and the same situation exists at all points.

AGAIN I state this distortion has damaged the Laramie plant by the loss in excess of 1,600 tons of business per year.

A similar situation to this arose in 1952. I appeared before this Honorable Commission at Salt Lake City on February 25, 1952 and submitted a statement similar to this one. Later, a 13th Section Hearing was held in Denver on March 3, 1952, against the Colorado Public Utilities Commission, and on March 7, 1952, in Lincoln, Nebraska against the Nebraska State Railway Commission.

As a result, decisions were rendered in Docket No. 30961, No. 30959 and 30960.

I quote from the Utah Intrastate Freight Rates and Charges Decision No. 30961, decided December 1, 1952, on Sheet 32 and a part of Sheet 33 as follows:

"The Monolith Portland Midwest Company operates a cement plant at Laramie, Wyo. This investment was made in reliance upon a continuance of the cement rate relations existing in that general territory prior to the general rate increases authorized in Ex Parte Nos. 162, 166 and 168. From 1937 to 1945 this company shipped annually an average of 1,640 tons (8,610 barrels) of [fol. 279] cement from Laramie to points in Utah. The refusal of the Utah Commission to permit the full increases authorized for application on interstate traffic disrupted the rate relations with the result that this company made no shipments to points in Utah since 1948 and no longer solicits business in that territory. The cement industry is highly competitive, the freight rate being from 25 to 33.33 percent of the delivered cost. An increase of one cent per 100 pounds is equivalent to 3.8 cents a barrel. Cement is essentially short-haul traffic."

"The Monolith Company contends that it has the right to choose its markets; and that the refusal of the Utah Commission to permit increases in the intrastate rates on cement to the basis authorized for interstate application unduly prejudices the cement shipper at Laramie and unduly prefers shippers of that commodity intrastate in Utah."

"On June 30, 1946, the Utah intrastate shipper at Devils Slide had a rate advantage of 28.5 cents under Laramie on traffic to Ogden, but at the present time the rate advantage, including the Ex Parte 175 increase (not involved in this proceeding), is 42.88 cents. By reason of the refusal of the Utah Commission to permit increases in the intrastate rates on cement to the extent authorized for interstate application, the rate disadvantage of the Laramie producer has been increased 14.38 cents. In 1950, the Denver and Rio Grande [fol. 280] Western, Union Pacific, Southern Pacific, and

> Western Pacific terminated 2,142 carloads of cement intrastate in Utah, as compared with 47 carloads in interstate traffic. This indicates the almost complete exclusion from the Utah market of cement produced in other states."

I further quote from the same Decision on Sheet 49—Findings and Conclusions No. five:

> "The Utah intrastate rates on sugar beets, beet pulp, molasses, lime rock, cement, coal, coke, ores and concentrates, and sand and gravel cause undue and unreasonable advantage and preference of intrastate shippers and undue and unreasonable prejudice and disadvantage to interstate shippers."

Both of these decisions covered the same subject of discrimination, or the raising of economic barriers in favor of intrastate shipments as against interstate shipments.

It is my contention that this is the same subject today covering Ex Parte 175 as these cases decided above covering Ex Parte 168.

During the years 1953 and 1954 we have shipped cement into the State of Colorado, Nebraska, New Mexico, South Dakota and Idaho.

This is sufficient, I believe, to indicate to this Commission that we are in a position to ship into these various territories and, therefore, no economic barriers should be permitted to be set up in Utah to prevent us from shipping into that State.

[fol. 281] We suggest that this Honorable Commission direct the carriers to restore the relationships which existed prior to the ex parte increases. In the instant case, that this Honorable Commission order the Public Service Commission of Utah to make effective all of the Interstate Commerce Commission Ex Parte orders within the State of Utah on cement.

May I add something also, Mr. Examiner?

Exam. Witters: Yes, Mr. Gillette.

The Witness: Some discussion was had on Exhibit No. 34, Mr. Watson's Exhibit, referring to page three.

I think that page three is most interesting, and very important. If you will notice that——

Exam. Witters: Wait until I get it here.

The Witness: Alright. Referring to page three, Exhibit No. 34, I have two points in mind.

The first one, you will notice that quite a substantial number of shipments were made from Devils Slide into Wyoming.

Now I call your attention to the fact that we are in Wyoming, and we are shipping intrastate in Wyoming to these points, and we are paying the fifteen percent increase in Wyoming.

Devils Slide when they ship interstate into Wyoming, they are also paying the fifteen percent increase.

All we are asking for is that we have the ability to ship into Utah, and that our competitors in Utah do they same as we have done in Wyoming, namely, pay the fifteen percent increase.

[fol. 282] The second point, and that is you will notice a shipment from Devils Slide to Pasadena.

That brings up one other point, the point has been made in the past——

Mr. Miner: If the Examiner please, it seems to me that this is argument and not evidence. I object to argument at this time, before the evidence is shown.

Exam. Witters: I think it is factual. Proceed.

Mr. Gillette (Continuing) I have been told in the past, at previous hearings, that we could not come into Utah because of the difference in the rate, that our rate has now gotten so high, that irrespective of these increases, there is no reason for us to even consider coming into Utah, and yet the Ideal Cement Company filed with Interstate Commerce Commission, Docket No. 31389, asking for some rates from Devils' Slide to other points, including Los Angeles, California, where their rate—they are requesting a 56 cent rate—I mention that because page three shows a shipment to Pasadena, California.

I believe that is all I have, sir.

Exam. Witters: Do you question this 60 cent rate.

Mr. Gillette: No. I point out that the reason for my mentioning it is that at a previous hearing, in Ex Parte 168, I was queried on the fact that our rate was so much higher than our competitors in Utah that we shouldn't even con-

[fol. 283] sider shipping into this territory, that that is something we should dismiss and we shouldn't even be here, and yet our competitors——

Exam. Witters: You are not questioning the 60 cent rate, are you.

A. Oh no, I am not questioning the 60 cent rate. I think it is interesting to see that a shipment has been made from Devils' Slide into California, a distance of 861 miles.

Exam. Witters: Do you wish to offer Exhibit No. 39?

Mr. Gillette: Yes, I wish to offer in evidence Exhibit No. 39.

Mr. Rampton: I object, if the Examiner please, upon the ground and for the reason that the sole burden is on the Interstate Commerce Commission under Section 13D, is to determine whether or not intrastate rates are so low as to place a burden on interstate commerce. The Commission has no power, in a proceeding of this kind, to rectify discrimination in rates between shippers. There is an entirely different type of procedure that should be adopted for that purpose.

Mr. Fitzpatrick: I differ with counsel on the coverage of Section 13, it covers discrimination, as between state and intrastate— We can argue that on the briefs, I do not think it is necessary to argue it at this time.

Exam. Witters: No, I do not think so. The objections is overruled. Exhibit No. 39, is received in evidence.

(Protestants' Exhibit No. 39 Witness Gillette received [fol. 284] in evidence)

Exam. Witters: Any Cross Examination?

Mr. Rampton: I have a few questions I would like to ask.

Exam. Witters: Very well.

Cross examination.

By Mr. Rampton:

Q. Mr. Gillette, there is no point in the State of Utah nearer to Laramie than to Devils' Slide is there?

A. No.

Q. There are many points in the State of Wyoming which are nearer to Devils' Slide are there not, than they are to Laramie?

A. Yes, we both seek our marketing area. We would both like to ship into both states.

Q. What is the approximate distance between Laramie and Devils' Slide?

A. Oh, I haven't checked it out recently, I have in the past, but this not being a rate case, I didn't think it was of any importance.

Q. Well would you say that the town of Rollings is at about the half way point?

A. Rollings R-o-l-l-i-n-g-s-

Q. Rawling. R-a-w-l-i-n-s

A. Rawlins, R-a-w-l-i-n-s you mean.

Q. Yes.

A. No, I do not know. I haven't checked it.

[fol. 285] Q. Do you know whether or not the Devils' Slide people market east of Rawlins to any considerable extent?

A. No, but I can assure you that we are meeting the Ideal Company's competition east of Rawlins.

In other words you must consider that we are not meeting the competition of a plant at Devils' Slide, as such, we are meeting the competition of a very large, one of the largest chain of cement plants in the United States.

We meet them when we go east, in Nebraska, to Superior, we meet them in our vicinity, from Betcher, we meet them from Portland, Colorado, we meet them from Trident, Montana, we meet them from Devils' Slide we meet them from all points, and therefore the fact that Devils' Slide may not ship in that particular vicinity may or may not mean anything, because they are one unit, they ship from many different points.

Q. I take it that this exhibit which you attach to your testimony, shows rates from Devils' Slide to Ogden and Salt Lake, and also rates from Laramie to those points. Now what does the 55.2 indicate, is that the rate per hundred weight?

A. Yes, that is the rate per hundred weight, including Ex Parte 175.

Q. That does include Ex Parte 175? What is the 21.2?

A. That is the increase of the 55.2 over the base rate.

Q. Oh, the 55.2 is the present rate?

A. Yes.

[fol. 286] Q. And what is the present intrastate rate from Devils' Slide to Ogden?

A. According to the information I was able to develop, an eight and a half cent rate on a 40,000 pound minimum, and a five cent rate on a 100,000 pound minimum, which, according to my information, expires at the end of this year, returning to seven cents.

Q. If the fifteen percent intrastate increase was granted how much would the rate from Devils' Slide to Ogden be?

A. That, plus fifteen percent. I do not have my slide rule with me.

Q. In other words somewhere around eleven cents?

A. Yes, whatever the increase is that we feel we are being discriminated against.

Q. Do you think that you could market in Ogden, and pay 55 cents per hundred weight and compete against Devils' Slide paying eleven cents?

A. We would like the opportunity of standing it. We do not want to be foreclosed, in other words, we do not want to have our marketing minds made up by any building of economic barriers, we want to make up those points ourselves, and I call your attention to the fact that we have a case, a complaint, which was filed from Devils' Slide to Los Angeles, and certainly if Devils' Slide thinks they can ship into Los Angeles, there should be no question about [fol. 287] our shipping into this area. We used to ship here.

Q. What is the selling price at the plant of a hundred pounds of cement?

A. I do not know. We meet competition——

Q. Approximately——

A. I do not know—we meet competition where we find it.

Q. What is the cost of producing a hundred pounds of cement?

A. That is information which if I had it I would not be at liberty to give you.

Q. Well at any rate we can say this, that your profit on a bag of cement is less than 55 cents, isn't it?

A. Fifty-five cents, I do not know, I am not giving you any information on it——

Q. In other words, you haven't any idea as to whether you can market in Ogden with a 44 cent rate disadvantage any better than you can with a 47 cent rate?

A. Well I have, but it is not my province. It is the province of our sales department to determine that, and we do not feel that you should create a barrier in favor of mills located within a state against a mill shipping interstate.

Q. What you are talking to me about now is that you do not know whether you would be any better off if the increase were put in over here, you do not know whether you would be able to market here even if it were?

A. We would be much better off, we would be better off [fol. 288] by the measure of the difference.

Q. Are you willing to tell me now that you can market competitively at Ogden against the Devils' Slide with a 44 percent rate disadvantage?

A. You mean 44 cents.

Q. 44 cents?

A. You said 44 percent.

Q. I am sorry, 44 cents.

A. That is for us to decide. It is not for you to decide to build a barrier against us.

Q. The Commission is the one to decide that.

A. I will stand corrected, it is up to the Commission to decide but it is not up to you to try to build a barrier against us.

Q. I am asking you, in your opinion, can you market in Ogden with that 44 cent disadvantage?

A. That is something for our sales department to determine, after we are on a fair basis.

Q. In other words you do not know, is that right?

A. I wouldn't put it that way.

Q. Well, if you do know tell me.

A. I would tell you that it is our business to market cement where we can, we meet our competition where we find it, and we are meeting the competition of this large company in every direction we ship.

Q. I will ask you a very simple question. In your opinion, [fol. 289] you personally, and your company, can you market——

A. You don't need to shout at me, I can hear you.

Q. Can you market in Ogden with a 44 cent disadvantage over Devils' Slide?

A. That is not for me to decide. It is up to our sales department.

Mr. Rampton: I am asking for his opinion, he can say that he doesn't have one, or if he does he can state what it is, Mr. Examiner.

Examiner Witters: He said he wanted the opportunity.

Mr. Rampton: He wanted the opportunity, and I am asking him if, in his opinion, he can take advantage of the opportunity if it is given to him, but he won't answer the question.

A. It is up to us to take advantage of an opportunity when equal opportunity is afforded, but we should not have a barrier built against us without our having the opportunity to make up our minds.

Q. I am asking you now, in your opinion, if you are given the opportunity, can you take advantage of it?

A. I am not in the sales department and it is not up to me to decide.

Q. Did the sales department send you over here to testify, or did you come on your own.

A. I came on my own.

Q. Then right now you are telling me that you don't know, [fol. 290] the sales department may know, but you do not know——

Mr. Fitzpatrick: He has told you several times that that isn't his department, and it is up to the sales department to decide whether they can compete, and all that he is interested in is affording the opportunity.

The Witness: may I answer that?

Mr. Fitzpatrick: He is arguing with you as a witness.

The Witness: I appreciate that, but I don't mind arguing with him. I can argue as well as he can.

Mr. Fitzpatrick: Very well, then answer.

A. If you will refer to my page six——

Q. Alright.

A. You will see the location of Laramie, Wyoming. You will see that no matter where we ship, any substantial distance, we are going to cross state lines.

It is my business to see that we are afforded equal opportunity in every direction that we ship.

This case is before us because we at one time shipped into Utah, and I decided that I should come here and see if we could be afforded equal opportunity to ship into your excellent state as we did at one time.

Q. You know where Devils' Slide is located, don't you?

A. Yes.

Q. On your map, it is located somewhere near midway between Ogden and the border, isn't it?

[fol. 291] A. I do not know that it is midway, but I do know that it is between Ogden and the border, yes.

It was located there, in the years before, when we used to ship in here. They haven't changed their location.

Q. Once again I will ask you, in your opinion, your personal opinion—if you don't have a personal opinion I don't mind your telling me so—in your opinion is there any point in Utah where you can market competitively with the Devils' Slide people, even if the increase is granted?

A. I would like to repeat what I have told you several times, and that is that it is my province to see that we have equal opportunity to ship in any direction that we wish to ship.

Mr. Rampton: He has made that answer several times, Mr. Examiner, and it isn't responsive at all.

By Exam. Witters:

Q. Do you have an opinion, or do you care to express one?

A. It is my opinion that we should study it, and that we should have the opportunity to ship or not as we see fit, to meet the market competition. I believe we should be afforded the opportunity.

By Mr. Rampton:

Q. You will make the decision when the time comes?

A. When we have equal opportunity the decision will be made by our sales department, yes sir.

Q. In other words you have no opinion now?

Mr. Fitzpatrick: I think the witness has answered.

[fol. 292] Mr. Rampton: I do not think he has.

A. Well, I have done the best I could for you. I have told you we are here to try to see if we can have an equal opportunity to ship into this very excellent state, as we did at one time, and located as we are, we ship across state lines with a vast majority of our shipments, and it is incumbent upon us to try to keep equal opportunity wherever we want to ship or wherever our marketing areas are.

Q. You haven't shipped into Utah since 1948, is that true?

A. That was my statement, yes.

Q. When was the plant at Devils' Slide established, do you know?

A. Oh, back around 1920 or something like that, or before.

Q. Did you ship into Utah——

A. Mr. Taylor can tell us, he is here.

Mr. Taylor: Since 1908.

The Witness: My apologies.

A. In other words, Devils' Slide has been there since 1908, and that is certainly far prior to the time we shipped here.

Q. Did you market any of your products in Utah, or any substantial amount of your products in Utah, between 1932 and the beginning of the war?

A. I believe my statement covered that. On page two at the top of the page, quote, I have checked back through our records as far as 1937, and find that from 1937 [fol. 293] through 1945 we shipped an average of 1,640 tons or 8,610 barrels, per year into the State of Utah. End of quote.

Mr. Fitzpatrick: About three and a half million pounds

Q. But you do not know how heavy it was in the prewar years?

A. Which war?

Q. In other words, the only time you have ever been able to market in the State of Utah to any substantial degree, was during the time of emergency or period of shortage?

A. No, I disagree with you. I checked back only so far as 1937, and I am certain that 1937 was not in a period of emergency. At that time I was in our sales department in California. In those days we were really digging for business, and I am sure that was the case in Wyoming.

Q. Could you give us the figures for the years 1937, 1938, and 1939?

A. I don't have them here. All I have is this statement and it is similiar to the statement I made here two years ago. I do not recall whether you were here, at that time, two years ago or not.

Q. I don't see your statement. What were the years again that you averaged?

A. At the top of page t

Q. 1937 to when?

A. Through, 1945. We shipped an average of 1,640 tons.

Q. You haven't given us one of those one horse and one [fol. 294] rabbit have you?

A. I am sure I would not come here and mislead you gentlemen in any way. Our business is too big for that.

Q. But you do not know how much you did in the pre-war years, or how much in the years after the war started—all you know is the average for both periods?

A. 1937 was certainly pre-war.

Q. Yes—it started in 1941.

A. Right.

Q. Alright you have four pre-war years and four war years, and there you are taking an average?

A. Oh, I see what you mean. No, I assure you there was no intent to mislead you there—no, one horse and one rabbit, I assure you. I do not recall the figures, but they were fairly even shipments during that time. I am satisfied we shipped prior to 1937, but we only seemed to be able to get back that far in our records.

Mr. Rampton: I think that is all.

Cross examination.

By Mr. Sohm:

Q. In other words, you do not know whether you are being discriminated against or not, do you?

A. I am sure we are.

Q. You are not shipping now?

A. Well the fact that we are not shipping, wouldn't that indicate discrimination—well, I am not getting into legal [fol. 295] arguments—I am just here as a witness, not as an attorney.

Q. You do not know whether you will be shipping or not in the future, even if this increase is granted?

A. Well, that is really perhaps correct, because it is up to the sales department. What I want to point out is that we want an equal opportunity to ship, and it is very possible that we will ship, because we are shipping into many other states, we have shipped in the past, and I fail to see any reason why we should not come back into this territory.

Q. Will you answer my question. You do not know, do you, whether or not you will be shipping in the future, if this increase is granted?

A. Isn't this the same place we were a bit ago?

Mr. Miner: Pardon me, I think this is repetition. I think Mr. Rampton went so far on that subject it is really unnecessary to have any further cross examination on the same subject.

Mr. Sohm: I am not asking him the question that Mr. Rampton did at all. I am asking him a question that can be answered yes or no.

Q. Do you know whether you will be doing shipping or not in the future, into this territory, if the increase is granted. Now you can say yes or no.

A. It is not up to me to decide. It is up to me to obtain equal opportunity. If we obtain equal opportunity, that is my province, then it is up to our sales department to decide.

[fol. 296] Q. You will agree then that if you don't ship

in the future, if this increase is granted, you will not be discriminated against?

A. No. You are getting into legal arguments and I am not in a position to do that.

Mr. Sohm: That is all.

Cross examination.

By Mr. Taylor:

Q. Mr. Gillette, in reciting your shipments made in 1947 and 1948, page two first paragraph, you state that the shipments which were made in those years, were made because of the shortage of cement. Is that right?

A. I think so. I copied this from our statement we made two years ago, and I feel it is a correct statement.

Q. That is sworn testimony—are you uncertain about your testimony?

A. I am not uncertain about my testimony.

Q. In other words, this is a correct statement?

A. I am attempting to be polite to you.

Q. I am trying to be polite to you too, I just want to know if this is a correct statement.

A. It is, or I wouldn't put it in.

Q. Alright then, that is a correct statement. You say "A shortage in the area has disappeared. We are now completely shut out of the market in Utah, because of the several percentage increases." Well you were shut out be-
[fol. 297] fore the 166 went into effect, were you not?

A. No, I don't quite understand your reasoning.

Q. Well, have you shipped any since the 166 went into effect?

A. What date was that, I don't recall, there were so many of them. What year was that? I think we have an exhibit here on that.

Q. Ex Parte 166 became effective on Interstate traffic, August 21, 1948.

A. And in Utah?

Q. I don't have that information.

A. When that became effective I don't know.

Q. Well when they got the 168 increase in Utah, and it

became effective on interstate traffic, have you shipped any cement since then?

A. By that time we had 175 on us.

Q. No, you didn't, I beg your pardon, 175 did not become effective until April 4, 1951, that is the first 175 increase.

A. And 168 became effective in Utah when?

Q. I am not talking about Utah. Your rate is subject to interstate and not the Utah rate?

A. That is what I am trying to point out. There is an overlapping here, by the time the 168 became effective in Utah the 175 became effective on us interstate, and now there is no effect in Utah of 175. You see what I am getting at, there is an overlapping there that is still affecting us.

[fol. 298] Q. That doesn't affect the fact that you didn't ship after the Ex Parte 166 increase went into effect on August 21, 1948, on interstate traffic?

A. Well you had your lapses—you had between the affective dates of the interstate and Utah, so that I couldn't really give you an answer to it.

Q. The 168 increase became affective interstate, January 11, 1949. Did you ship under that?

A. 1949?

Q. Yes.

A. When did it become affective in Utah?

Mr. Fitzpatrick: The order is dated March, 1953.

Q. May 1, 1953.

A. And you see by that time we had 175 on us, and that lapsed, there was an overlapping, so really I couldn't give you an answer.

Q. Presently the Utah rates are subject to 168 only; and your rates are subject to 168 and 175—can you make any shipment with the 175 increase added on to Utah?

A. Hasn't that question been asked and answered several times?

Q. Well if you couldn't ship under the previous increase——

Mr. Fitzpatrick: That has been asked and answered several times.

The Witness: I believe you are the third gentleman that has asked that same question.

[fol. 299] Mr. Taylor: What I am trying to get at, Mr.

Examiner, if he couldn't ship under the 166 increase, he couldn't ship under the 168 increase, so how could he ship under the 175 increase, with all of the——

The Witness: May I give you a good example, if that is the case—if we couldn't ship with that disability against us, why did you file Docket No. 31389, with rates into Los Angeles?

Mr. Taylor: That was an emergency, during a time or shortage, when your mills in south California, of which you have one, 117 miles from Los Angeles, I believe, couldn't supply the cement.

The Witness: Well it is conceivable that situations like that might arise here, and we do not want to be foreclosed.

Exam. Witters: This is developing into a personal argument here.

By Mr. Taylor:

Q. Well then how far is it from Laramie to the Utah State Line, on the Union Pacific——

A. You have the mileage there, and I don't——

Q. Yes, I have it.

A. Well read it. I don't know it.

Q. Will you take my word for it, 356 miles, from Laramie to Yuta, which is right on the line and that same U.P. line goes right through Devils' Slide into Ogden, and it is only 33 miles from Ogden to the last station in Utah, on the Union Pacific.

[fol. 300] A. By the same token, you go directly by Orogrande and Victorville, which are 116 miles from Los Angeles, and you are requesting rates into Los Angeles and going directly by them, and you were going a distance of some 800 miles.

Q. As long as you are bringing California into this thing, what is the rate we are requesting to Los Angeles?

A. I think it is 56 cents, as I read your complaint.

Q. What are the rates from the surrounding mills?

A. There are two rates, one in bulk and one in sacks.

Q. What is your rate from Monolith, get the furtherest mill out from Los Angeles?

A. Seven cents in bulk and about 8.8 cents in sacks.

Q. Compared with the emergency 56 cent rate that we are requesting.

A. Why wouldn't we be entitled to as much of a courtesy into Utah as you are entitled to into California?

Q. Well you already have rates into Utah, haven't you?

A. Yes, but you are not discriminated against——

Q. We don't have rates into California.

A. But you are not discriminated against, I mean—we are being discriminated against when we have the 175 increase, and you have a barrier around your—you see you have the advantage, Mr. Taylor, if you will refer to our page No. six, you have an advantage there, when we ship into Utah we have to ship interstate, and you ship intrastate, when [fol. 301] we ship into Colorado we have to ship interstate, and you ship intrastate. When we ship into Nebraska, we have to ship interstate and you ship intrastate.

All I am attempting to do is to get an equal opportunity to ship interstate with our competitors who are shipping intrastate.

If we have an increase to us of 175, it doesn't seem fair in the first place, that we should bear the burden, if there is a burden, I am not in a position to argue that, but to bear the burden of paying a rate that doesn't bear that increase, and, secondly if we have to pay it our competitors should pay it.

Q. The measure of the rates has no bearing whatever——

A. Yes, it has a bearing. When we get our equal opportunity, then we will check further, but unless we have equal opportunity we are foreclosed right from the very beginning.

Q. Explain just what you mean by "equal opportunity".

A. Equal opportunity in this particular instant means paying the same increases interstate that is paid intrastate.

Q. In other words the same rate mileagewise, on a graduated scale——

A. No, no—I do not think so, because you have a rate here of five cents well, what we are actually comparing is our rate of 40 cents. I mean our 40,000 rate, you have a special rate in there, and some day we will explore that, but that is something else again, and——

Q. That was published to meet truck competition.

A. Yes, we will explore that sometime, I know quite a bit [fol. 302] about truck rates.

Q. Let's explore it right now.

A. No, we are discussing——

Q. As long as we are discussing rates lets bring it all in.

A. No, this is not a rate matter, it is a revenue matter.

Exam. Witters: I do not think we are getting anywhere here.

By Mr. Taylor:

Q. Well now, you have brought Colorado into the case, how far is Laramie from the nearest rail station in Colorado?

A. Are we going to try the Colorado case now?

Q. No. But you were bringing Colorado into it.

A. I was merely pointing out that we are an interstate shipper.

Q. So are we.

A. Yes; into New Mexico.

Q. We ship just as much interstate as you do.

A. Oh, my Heavens, you are a much larger company than we are, you are the third largest company in the United States. I appreciate that.

Q. Modestly admitted.

A. We are just a little outfit, just trying to get along and meet you where we can.

Q. I am trying to help you.

A. You certainly are—out.

[fol. 303] Q. How far is Laramie from the nearest rail station in Colorado?

Mr. Miner: I think we have taken enough time on that, and it is unnecessary——

Exam. Witters: Yes.

Mr. Taylor: Well, he talks about shipping into Nebraska, and he doesn't know the location of the Nebraska mills, certainly he can ship into western Nebraska, but he doesn't go beyond the middle line——

Mr. Miner: I do not think it is necessary to take the time of this hearing to explore each one of the states.

Mr. Taylor: The freight rate differences there are not

near as great as they are from Laramie, his rates from Laramie to Utah as compared with ours from Salt Lake, from the Salt Lake mills, in Utah—Salt Lake is the biggest market in Utah for cement, and Ogden is second. I wouldn't undertake to place them in numerical order. The fact remains that he couldn't ship cement years ago and all of this——

Mr. Fitzpatrick: Is this the time for argument, Mr. Examiner?

Exam. Witters: I do not think we should argue at this time.

Mr. Taylor: I am just expressing an opinion, Mr. Examiner.

Exam. Witters: Any other questions. Have you finished your cross examination?

Mr. Taylor: This whole testimony here embodies a com- [fol. 304] plaint against the I.C.C. for not making horizontal increases. He doesn't like percentage increases. It is just elemental that a 20 percent increase takes up the high rate——

Mr. Fitzpatrick: Just a minute, isn't this still argument?

Exam. Witters: Yes, it is argument.

Mr. Fitzpatrick: That can be covered in briefs.

Mr. Taylor: I do not think so. This is his direct testimony here, and he is complaining about the carriers being admonished to reconsider rate relationships. If you are going to establish just rates, why—I do not think they have considered that or done anything about, in the 162, 166, 168, or the 175 cases.

Exam. Witters: Are there any further questions of Mr. Gillette here?

Mr. Taylor: No, I do not think so.

Exam. Witters: Very well. We will adjourn at this time until 9 o'clock tomorrow morning.

(Whereupon at 5 p. m. the hearing was recessed until 9 o'clock Friday, May 21, 1954)

[fol. 306] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 31484

In the Matter of

UTAH INTRASTATE FREIGHT RATES AND CHARGES.

Transcript of Hearing of May 21, 1954

Senate Lounge Room
State Capital Bldg.,
Salt Lake City, Utah,
May 21, 1954.

Met pursuant to adjournment at 9:00 A.M.

BEFORE:

MYRON WITTERS, Examiner,
Interstate Commerce Commission.

APPEARANCES:

(As heretofore noted.)

[fol. 310] PROCEEDINGS.

Exam. Witters: Come to order gentlemen.

Mr. Fitzpatriek: I would like to recall Mr. Kroll for a couple of questions.

Exam. Witters: Very well.

HERMAN C. KROLL, upon being recalled, testified as follows:

Direct examination.

By Mr. Fitzpatrick:

Q. There were a couple of questions reserved. Can you proceed with those, Mr. Kroll?

A. Yes, I can. Mr. Rampton asked for a breakdown of the net investment and the rate of return for 1953 of the five Class 1 carriers shown on Page 1 of Exhibit No. 2. I have now received that information.

The D. & R. G. W.—$215,965,264.00, rate of return 6.06 percent.

Southern Pacific—$1,353,244,017.00, rate of return 3.48 percent.

Union Pacific—$1,117,089,068.00, rate of return 2.58 percent.

Utah—$7,872,895.00, rate of return 0.97 percent.

Western Pacific—$148,246,868.00, rate of return 5.75 percent.

These figures total to $2,842,418,112.00, average rate of return 3.44 percent.

Now Mr. Rampton also asked me to develop the amount of cash on hand as of the end of 1953, and to determine the number of days that such can cover the operating expenses. These figures I have worked up myself and some [fol. 311] of the calculations were by slide rule and may not be specifically accurate.

Southern Pacific—$29,465,711.00, about 25 days operating expenses.

D. & R. G. W.—$7,723,801.00, about 51 days operating expenses.

Union Pacific—$48,400,345.00, about 44 days operating expenses.

Utah—$381,400.00, 112 days operating expenses.

Western Pacific—$4,542,972.00, about 41 days operating expenses.

Mr. Fitzpatrick: I believe that covers the items Mr. Kroll was asked to supply.

Mr. Rampton: That is all of those figures. Now what I would like if the Commission doesn't mind, I have some calculations to do and then a few more questions to ask Mr. Kroll. I will be able to get through in ten minutes.

Exam. Witters: Do you want to recall him?

Mr. Rampton: Yes, after about an hour.

Exam. Witters: Very well.

Exam. Witters: You may be excused then.

(Witness excused)

Exam. Witters: Your next witness.

Mr. Sohm: I will look over this, unless somebody else has some more questions, I will look over this.

Mr. Fitzpatrick: Very well.

I will call Mr. Jensen.

[fol. 312]

HERMAN S. JENSEN was sworn and testified as follows:

Direct examination.

By Mr. Fitzpatrick:

Q. Will you state your full name please?

A. Herman S. Jensen.

Q. Your residence and occupation?

A. My residence is #2179 Browning Avenue, Salt Lake City, Utah. I am Assistant Superintendent for the Union Pacific on the Utah Division.

Q. And how long have you been employed by the Union Pacific Railroad?

A. Twenty-three years.

Q. And how long have you been employed in the Operating Department of the railroad?

A. Practically all my experience has been in the operating department.

Q. And how long have you held your present position as Assistant Superintendent of the Utah Division?

A. Two and a half years.

Q. And what are your duties in that respect?

A. My duties are generally supervising my operation on the Utah Division, working directly under the Superintendent.

Q. Now then you were also Assistant General Superintendent on the Wyoming Division lines, were you not in Utah?

A. I was Assistant Superintendent on the Wyoming lines [fol. 313] and Montana lines in 1948.

Q. Now does anybody desire that I qualify Mr. Jensen's

operating experience back from the beginning or—well please state your operating experience?

A. My operating experience is twenty years, in the operating department, do you mean as supervisor?

Q. Yes, just state the various positions that you held?

A. I was trainmaster in San Bernardino, California, in 1943, trainmaster at Yermo, California, in 1944, '45, trainmaster, in Las Vegas, Nevada, in 1945 to '46 and '47, assistant superintendent at Pocatello, Idaho, over the Utah Division which included part of the Wyoming Division and Montana Division in 1947 and '48, I was trainmaster on the first subdivision from Salt Lake to McCammon in 1949, '50 and '51, and from then since assistant superintendent of the Utah Division.

Q. And you therefore have had experience on all of the lines of the railroad of the Union Pacific in Utah, is that right?

A. That is correct.

Q. And in your duties you have direct supervision of the operation of trains, crews and everything like that?

A. Yes, sir.

Q. Are you familiar with the issues in this proceeding?

A. I am.

Q. Now over what portions of the line of the Union Pacific do you presently have jurisdetion in this Utah Division?

[fol. 314] A. From Las Vegas, Nevada, to McCammon, Idaho.

Q. And that includes the north and south lines through Utah, and all the branches, does it?

A. Yes, sir.

Q. You are familiar with the operations of the Union Pacific over the Utah Division, is that not correct?

A. Yes, sir.

Q. You stated you are also familiar with the operations of that short line between the Wyoming-Utah line and Ogden and on the Park City branch?

A. Yes, sir.

Q. Are you familiar with the handling of the freight traffic on the Union Pacific in Utah, how it is loaded into cars and how it is moved?

A. I am.

Q. And that is under your jurisdiction?

A. Yes.

Q. And is that both interstate and intrastate?

A. It is.

Q. Please tell us whether there is any difference in the method of handling interstate traffic and intrastate traffic in Utah?

A. We don't make any distinction between the two traffics, in fact the same crews, the same clerks, and the same trains haul interstate traffic as intrastate traffic.

Q. And you have cars of interstate traffic and intrastate [fol. 315] traffic in the trains at the same time?

A. Yes, practically all of them.

Q. In other words——

A. It is intermingled traffic in all the trains, intermingled interstate and intrastate.

Q. Now I don't know whether you mentioned facilities. Are the same facilities used for the transportation of intrastate and interstate commerce?

A. Yes, sir.

Q. Now have we left out anything in the operations that treat with interstate and intrastate commerce on the Union Pacific in Utah?

A. No, the only thing is your L.C.L. is intermingled in the same car, it is loaded in the same car by the same crews billed by the same clerks and it is intermingled in the same car and just separated at its destination, as it arrives at the destination.

Q. Does the Union Pacific have branch lines in Utah, I think you mentioned they did?

A. Yes, sir. We have branch lines——

Q. Can you give us the names of those branches?

A. Beginning on the first subdivision on the Utah Division, the portion of the Cache Valley branch and a portion of the Malad branch, all of the Thatcher branch, the Bear River branch, Syracuse branch, and on the second subdivision we have the Eureka branch, Silver City branch, Mammoth branch, and the Fillmore branch and on the [fol. 316] third subdivision we have the Cedar City branch, and Iron Mountain branch.

Q. And then what are the branch lines on the Wyoming Division?

A. The branch line is the Park City branch and the Keithly branch that takes off the Park City branch.

Q. Can you tell us what the main line mileage of the Union Pacific in Utah is?

A. The main line mileage within the State of Utah is 452½ miles.

Q. Is that the main line or the branch line?

A. The main line.

Q. The main line. And what is the branch line mileage?

A. The branch line is 225½ miles within the State of Utah.

Q. Now does the Union Pacific handle intrastate and interstate shipments on all of the branch lines you named?

A. Yes, sir.

Q. And frequently do you just have one train a day on those branches in each direction or tri-weekly service or something of that kind?

A. As a general rule we have one train on each branch, and some of which turn around and come back to the retire point the same day, which would be a train each way a day, but it is the only train in that territory with the exception of the Iron Mountain.

Q. Now then as to those first branches that you referred to, that train handles everything in the way of [fol. 317] intrastate and interstate commerce at that time does it?

A. Yes.

Q. Well then as to the Iron Mountain branch, that also includes the Cedar City operation, doesn't it?

A. Yes. The Iron Mountain branch takes off from Cedar City branch at Iron Springs.

Q. And is that traffic intermingled as between state and interstate?

A. It is.

Q. Now we have referred to all the main and branch lines in Utah, haven't we?

A. Yes, we have.

Q. And your testimony thus far covers all those main lines in Utah? And branch lines?

A. Yes, it does.

Q. Well then is this a correct summing up of your testimony—can we sum up your testimony this way. Does interstate and intrastate shipments in Utah move under substantially similar conditions or otherwise?

A. Identically the same conditions.

Mr. Fitzpatrick: That is all. Cross examine.

Exam. Witters: Do you have any other questions?

Mr. Fitzpatrick: That is all.

Exam. Witters: Any questions, Mr. Solim?

Mr. Sohm: I don't believe so.

Cross examination.

By Mr. Rampton:

Q. Mr. Jensen, you do have some circumstances under [fol. 318] which interstate and intrastate movements move differently do you not?

A. Not in the direct movement of the traffic. The only difference is that the work involved in accumulating some of the intrastate traffic we don't in the interstate traffic.

Q. In fact you have between here and say Logan, you have on interstate traffic substitute service by truck do you not? That you don't have on intrastate?

A. That is L.C.L. only.

Q. But that does exist doesn't it?

Mr. Fitzpatrick: By substituted service you mean substitute motor carrier?

Mr. Rampton: Right.

Mr. Fitzpatrick: Just so you and the witness understand each other.

A. Your L.C.L. service that goes in the truck is handled by the same clerks your intrastate traffic is at the docks.

Q. But it is hauled differently isn't it?

A. No, it isn't different.

Q. Do you have the same service on intrastate?

A. We have the same service——

Q. Go ahead.

A. (Continuing) We have the shipments themselves com-

ing over the same dock interstate traffic is handled. We have substituted truck service between here and Logan.

[fol. 319] Q. On interstate only, right?

A. Well I am not familiar with the truck operation.

Q. So you wouldn't know about that?

A. No.

Q. Now you also handle a certain amount of this piggy-back business don't you?

Mr. Fitzpatrick: Do you understand what he is talking about?

The Witness: Yes.

A. You mean the truck-trailer service?

Q. Yes.

A. We handle considerable truck-trailer service, yes.

Q. That is entirely interstate, there is none handled intrastate at all is there?

A. That is correct.

Q. That is a considerably more expensive type of service to render than just your ordinarily hauling is it not?

A. Well, I am not in a position to say just what the actual charges are against the truck-trailer service.

Q. Mr. Jensen, is the purpose of your testimony here to establish that you can't break the expenses, operating expenses of interstate and intrastate apart?

A. Well I don't think that you could, and I know I can't.

Q. Well you know you are allowed to do it don't you in the annual report to the Commission?

Mr. Fitzpatrick: I don't believe Mr. Jensen is advised on that.

[fol. 320] Mr. Rampton: I want to know what he is testifying about.

Mr. Fitzpatrick: He is testifying about the operating division in the handling of interstate and intrastate.

Mr. Rampton: He can say whether he is advised or not. I want to ask him a question.

A. I told you that I wouldn't attempt to try myself.

Q. You don't know how your roads do make the allocation or the division of expense between interstate and intrastate that they do make to this Commission?

A. Well I don't know just how they could do it, because the same trains, the same clerks, handle the same business. It is all inter-mingled traffic on your trains. I don't know how you could segregate your charges.

Q. But if they do it is reasonable to assume that they have some reasonable basis on which to do it, isn't that right?

A. It might be reasonable, I don't know how correct it would be.

Mr. Rampton: I believe that is all.

Mr. Fitzpatrick: That is all. Thank you, Mr. Jensen.

Exam. Witters: You may be excused.

(Witness excused)

Mr. Fitzpatrick: Call Mr. Earley.

T. K. EARLEY was sworn and testified as follows:

Direct examination.

By Mr. Fitzpatrick:

Q. Will you state your name please?

[fol. 321] A. My name is T. K. Earley.

Q. And your residence and occupation?

A. Denver, Colorado, Freight Traffic Manager; Denver & Rio Grande Western.

Q. And how long have you held that position, Mr. Earley?

A. Three years.

Q. And what is the total of your experience in traffic and rate work?

A. Thirty-five years.

Mr. Fitzpatrick: Do the gentlemen desire that I qualify Mr. Earley?

Exam. Witters: His traffic qualifications are admitted. You may proceed.

Q. Now are you familiar with the issues in this proceeding, Mr. Earley?

A. Yes.

Q. And have you prepared certain exhibits for introduction here today?

A. Yes.

Q. The exhibits which you will offer, have they been prepared under your direction or supervision?

A. Yes.

Q. And the data and information in the exhibits which you will offer is that data and information correct?

A. To the best of my knowledge.

[fol. 322] Mr. Fitzpatrick: Now Mr. Earley is prepared to go ahead without questioning and make a statement, Mr. Examiner, if that is agreeable.

Exam. Witters: Very well.

Mr. Fitzpatrick: Just proceed, Mr. Earley.

Mr. Earley: Could we go off the record for just a moment?

Mr. Fitzpatrick: Yes.

(Discussion off the record)

Mr. Earley: My name is T. K. Earley. My address is #1531 Stout Street, Denver, Colorado. I am Freight Traffic Manager of the Denver and Rio Grande Western Railroad Company, and have been employed in the Traffic Department of this company for over thirty years.

I have participated in a number of proceedings before the Interstate Commerce Commission and various state commissions.

My testimony in this case will be on behalf of all respondents, and will deal particularly with rates and charges on coal, coke, ores and concentrates, and waste materials for remelting.

Witness Watson has testified to the position of all of the respondents in this proceeding, and has likewise introduced testimony of a general nature pertaining to the history of the general rate increases and reductions which have preceded this case, as far back as June 25, 1918, up to and including the action of the P.S.C.U. in dismissing the carriers' petition for like increases on intrastate traffic as were [fol. 323] authorized by the I.C.C. on interstate traffic under X-175.

I subscribe to all of the testimony submitted by Witnesses Watson and Kroll. Some of Mr. Watson's testimony supplements and supports the testimony which I will now introduce with respect to the rates and charges on the commodities enumerated, viz.: Coal and Coke, Ores and Concentrates, and Waste Materials for remelting.

Obviously it would be impossible to deal with each individual intrastate rate and charge applicable on these commodities, but the rates and charges covering the most important movements will be dealt with.

Reference to Exhibit No. 6, Witness Watson, indicates that the commodities with which I am dealing account for 27.18 percent of the total tons of freight originated in the year 1953, by the D. & R.G.W. and Union Pacific in Utah.

Reference to Exhibit No. 7, Witness Watson, likewise shows the intrastate and interstate movement of these commodities for selected months in 1953 and 1954, for account of all respondents except the Union Pacific, and for the full year of 1953 for that line.

Witness Watson likewise included in his exhibits 8 to 24, certain maps which showed destinations at which intrastate, interstate, or both intrastate and interstate shipments of the commodities with which I am dealing, terminated on lines of respondents during selected months in 1953 and [fol. 324] '54. Witness Watson has explained in his testimony the purpose for which these maps were prepared and submitted.

(Respondents' Exhibit No. 40, Witness Earley, marked for identification)

Exhibit No. 40 (RG-2) shows the carload movement of bituminous coal from Utah mines to destinations in the State of Utah during the months of May, August and November, 1953, and February 1954. The movements shown were those received at destinations in the months named, as reported by the Accounting Department of the respondents.

Page 1 of this statement is a recapitulation of the detailed information shown on Pages 2 to 21 of the exhibit, and indicates the number of cars, total tonnage, revenue under applicable rates, revenue under rates sought in this proceeding, and the differences between the revenue under

the rates sought and the revenue under the applicable rates for the selected four months period.

(Respondents' Edhibit No. 41, Witness Earley, marked for identification)

Exhibit No. 41 (RG-3) shows the carload movement of bituminous coal from origins outside the State of Utah to Utah destinations during the same four months referred to above in connection with Exhibit No. 40 (RG-2). It indicates movements received at destinations in those months as reported by the Accounting Departments of the respondents.

[fol. 325] As in connection with the previous exhibit, Page No. 1 is a recapitluation of the basic information shown in the other pages of the exhibit.

Coal in carloads, moved from points in Arkansas, Colorado, Oklahoma, Pennsylvania, Utah, Washington and Wyoming to destinations in Utah during the selected four months of 1953 and 1954.

From interstate points of origin in that period, 3,551 carloads, aggregating 230,484 tons, moved to ten Utah destinations on which the total revenue was $1,446,101.00.

During those same months, 11,446 carloads (791,363 tons) of coal moved intrastate in Utah, with freight charges of $1,636,459.00.

If the intrastate rates had been increased to the extent authorized for application on interstate traffic, the freight charges would have totaled $1,827,325.00, a difference of $190,866.00.

Expanded to a full year, the deficit or loss to the carriers on Utah intrastate coal traffic, because of the refusal of the P.S.C.U. to permit the increases sought, would be in the neighborhood of $575,000.00. To this figure should be added a substantial amount of revenue which the carriers are now deprived of because interstate rates have been made not subject to X-175. Competitive influences arising by reason of the non-application of such increases on Utah intrastate traffic caused this action to be taken.

[fol. 326] This can be seen by reference to Exhibit No. 41 (RG-3), the movement in question being identified by refer-

ence mark explained as follows: "Not collected account X-175 increase removed," etc.

(Respondents' Exhibit No. 42, Witness Earley, marked for identification)

Exhibit No. 42, (RG-4) is a statement showing rates on coal from Utah mines to various destinations in Utah and Idaho prior to and subsequent to May 1, 1953, this date being that upon which the full interstate increases authorized in X-162-66-68 were made applicable on Utah intrastate traffic. Attention is directed to the fact that rates to the Idaho destinations shown are substantially higher than the rates to the Utah destinations listed. While it is true that the distances to the Idaho points shown are greater than to the Utah destinations, on the other hand the authorized increase of 12 percent, maximum 40 cents per ton (X-175), now is assessed to the interstate destinations but not to those in the State of Utah.

Since active sugar factories are located at Spearmint, West Jordan and Layton in Utah, and at Whitney (Preston), Blackfoot and some of the other Idaho destinations listed, the preference in favor of Utah intrastate traffic is revealed.

(Respondents' Exhibit No. 43, Witness Earley, marked for identification)

Exhibit No. 43, (RG-4-A) is a statement showing rates [fol. 327] on coal from Carbon County mines to West Jordan, Midvale and Salt Lake City, Utah also Preston, Idaho, from April 30, 1953 to date. In some respects the showing made by this exhibit is the same as the showing contemplated by Exhibit No. 42, (RG-4); the difference being mainly in the fact that Exhibit No. 43 (RG-4-A) shows the rates on sized coal as well as slack, to a smaller number of destinations.

(Respondents' Exhibit No. 44, Witness Earley, marked for identification)

Exhibit No. 44, (RG-5) is a statement somewhat similar to Exhibit No. 42 (RG-4), except that it includes rates on coal other than slack and applies to a limited number of

destinations in Utah and Idaho. The purpose of this exhibit is to show that while at one time a parity of rates existed to all of these destinations, this parity has been disrupted by the refusal of the P.S.C.U. to grant like increases to intrastate movements of bituminous coal, and while this situation was partially corrected on May the 1st, 1953, the rates to the Utah destinations are still preferential of that traffic to the extent that they do not bear the corresponding X-175 increase that is charged to Idaho destinations for comparable hauls.

(Respondents' Exhibit No. 45, Witness Earley, marked for identification)

Exhibit No. 45 (RG-6) shows the rates on coal in carload lots from Castle Gate, Utah, to Utah border stations, [fol. 328] compared with rates to the first interstate point beyond. It indicates that the interstate rates have borne the effect of the increases granted by the Interstate Commerce Commission in X-175, while the Utah intrastate rates have not been increased by these amounts. This exhibit shows that in instances where the same or nearly the same rates apply to adjoining stations, this parity, or near parity, has been noticeably disrupted due to the difference of treatment accorded interstate traffic on one hand and intrastate traffic on the other.

(Respondents' Exhibit No. 46, Witness Earley, marked for identification)

Exhibit No. 46, (RG-6-A), is a statement showing the movement of coking coal for the first four months of 1954, from Carbondale and Somerset, Colorado, to Geneva, Utah. Also shown is the movement of the same kind of coal from Columbia, Utah, to Geneva.

Had the P.S.C.U. authorized the X-175 increase on coal from Columbia, Utah, to Geneva, Utah, this increase would have been applied to the interstate rates from Carbondale and Somerset.

However, the X-175 increase on this interstate movement was removed from the rates from Colorado origins in order to enable producers in Colorado to maintain a competitive position with Utah producers.

During the four months of January through April, 1954, the rail carriers have been denied revenue of $79,338.00 [fol. 329] because of the failure of the P.S.C.U. to grant the X-175 increase. Expanded to an annual basis, this figure would become $238,014.00.

(Respondents' Exhibit No. 47, Witness Earley, marked for identification)

Exhibit No. 47, (RG-7) shows the total 1953 tonnage of coal originating at mines in the State of Utah and shipped by rail over the Carbon County, D. & R.G.W. and Utah Railroad. This coal is segregated as to interstate and intrastate traffic, and the latter tonnage has been further separated as between industrial and domestic coal.

This latter classification, namely, domestic coal, is largely sized coal (other than slack) for house heating and similar uses. The intrastate movement was 2,694,583 tons, of which 2,250,952 tons was industrial coal and 9,723 tons railroad company coal moving on revenue billing. The balance, or 433,908 tons was domestic fuel.

The respondents maintain that the vast preponderance of the industrial movement will be retained for rail haul after the imposition of the X-175 increases on Utah intrastate traffic.

It is their opinion that while the imposition of these increases may cause a loss of some of the domestic traffic, there will not be a corresponding loss in the industrial category due to use of other fuels or other means of transportation.

However, we realize that any increase in the cost of solid fuels is liable to foster the use of other fuels, namely, [fol. 330] gas or oil, and this is a situation which will be closely watched.

If and when the Ex Parte 175 interstate increases are likewise made applicable on Utah intrastate traffic, then the carriers will give serious consideration to the situation which will face them, in order to keep coal competitive for industrial uses in the territory north of Provo and Geneva.

This may require a look into the rates on slack coal from Carbon County to this territory.

Last fall an adjustment was made in the rates on slack coal as far north as Provo, the slack rates to this territory being adjusted to not exceed the rate on coking coal from Carbon County mines to Geneva and Ironton. The spread in the rates—the spread in the slack coal rates to Salt Lake and Ogden, for example, over Provo, was thus increased, and, as I have stated above, if and when the X-175 increase is applied within Utah, and the situation seems to call for an adjustment of the rates to this territory, the rate adjustment will be carefully reviewed at that time and necessary changes will be made to insure that the coal industry and the railroads are kept in a competitive position.

(Respondents' Exhibit No. 48, Witness Earley, marked for identification)

Exhibit No. 48 (RG-8) is a statement showing, for certain selected dates in 1953 and 1954, the mine prices on coal produced in Carbon County, Utah. It also shows the [fol. 331] freight rates applicable on the selected dates from Carbon County mines to Salt Lake City.

Finally, retail prices in Salt Lake City for the various grades of coal are also shown.

The P.S.C.U. authorized the full interstate X-162-166-168 increases on coal on Utah intrastate traffic effective May 1, 1953.

As the statement shows, the freight rates were increased 46 cents per ton on sized coal, and 38 cents per ton on slack coal, between the two selected dates of March 17th and December 10th, 1953.

As I have just stated, this change took place on May 1, 1953. Retail prices shown, which were obtained from various reliable sources within the coal industry, indicate an average increase of 51 cents per ton in the retail price at Salt Lake City, which more than compensates for the increase which took place in the freight rates.

This would indicate that were it not for the increase in mine prices during the winter months, the total increase in costs and more, would have been passed on to the consumer. When the mine prices were lowered in February of 1954, to the level of March in 1953, the retail prices in

Salt Lake City remained steady. This would indicate that retailers in places such as Salt Lake City are encouraged by lower mine prices in the summer, and perhaps some spring months, to store coal, since higher prices prevail [fol. 332] at the mine during the winter season.

In any event it would seem that the increase in freight rates which took place May 1, 1953, was not borne by either the producer or the retailer, but was more than passed on to the consumer.

Exhibit No. 22, Witness Watson, is a map showing the distribution of the movement of coke from intrastate and interstate origins terminated at Utah points on the lines of respondents during May, August and November of 1953, and February of 1954.

(Respondents' Exhibit No. 49, Witness Earley, marked for identification)

Exhibit No. 4, (RG-10), shows the carload movement of coke from Utah points to destinations in the State of Utah during the above months. The movements shown were those reported by the Accounting Departments of the respondents during these months.

The recapitulation on Page 1 of this exhibit shows the number of cars, the total tonnage, revenue under the applicable rates, revenue under the rates sought in this proceeding, and the difference between the revenue under the rates sought and the revenue under the applicable rates for the selected four month period.

(Respondents' Exhibit No. 50, Witness Earley, marked for identification)

Exhibit No. 50, (RG-11) shows the carload movement of coke from origins outside the State of Utah to Utah [fol. 333] destinations during the selected four months. These movements were as reported by the Accounting Departments of the respondents. The recapitulation on Page 1 of this exhibit is a summary of the basic data shown on the other pages.

Coke in carloads moved from points in Alabama, California, Colorado, Idaho, Indiana, Missouri, Pennsylvania,

Utah, Wisconsin and Wyoming, to destinations in Utah during the selected four month period.

From interstate points of origin during that period, 531 cars aggregating 19,563 tons of coke moved to fifteen Utah destinations on which the total revenue was $231,088.00. During those same months, 560 carloads (20,286 tons) of coke moved intrastate in Utah with freight charges of $27,871.00.

If the intrastate rates had been increased to the extent authorized for application on interstate traffic, freight charges would have totaled $31,215.00, a difference of $3,344.00. Expanded to a full year, the deficit or loss to the carriers on Utah intrastate coke traffic, because of the refusl of the P.S.C.U. to permit the increases sought, would be $10,032.00.

(Respondents' Exhibit No. 51, Witness Earley, marked for identification)

Exhibit No. 51 (RG-12) is a statement showing a comparison of distances, also rates on coke from points of origin in Utah to Utah and Idaho destinations. Active [fol. 334] sugar factories are located, for example, at Garland, Utah, and Preston, Idaho.

As of June the 30, 1946, there was a 15 cent differential in the rates on coake from Geneva, Utah, to these points. As of today, the differential is 62 cents, clearly showing the preference which exists in favor of Utah intrastate traffic.

Exhibit No. 23, Witness Watson, is a map showing the distribution of the movement of non-ferrous ores and concentrates from intrastate and interstate origins terminated at points in Utah on lines of respondents during May, August and November, 1953, and February, 1954.

(Respondents' Exhibit No. 52, Witness Earley, marked for identification)

Exhibit No. 52, (RG-14) shosw the carload movement of ores and concentrates from Utah points to destinations in the State of Utah during the above months. The movements shown were those reported by the Accounting Departments of the respondents during these months.

The recapitulation on Page 1 of this exhibit shows the

number of cars, the total tonnage, revenue under the applicable rates, and the revenue under the rates sought in this proceeding, also the difference between the revenue under the rates sought and the revenue under the applicable rates, for the selected four months period.

(Respondents' Exhibit No. 53, Witness Earley, marked for identification)

[fol. 335] Exhibit No. 53 (RG-15) shows the carload movement of ores and concentrates from origins outside the State of Utah to Utah destinations during the selected four months period shown on Exhibit No. 52, (RG-14). These movements were reported by the Accounting Departments of the respondents. The recapitulation as shown on Page 1 of this exhibit is a summary of the basic data shown on the other pages.

Ores and concentrates in carloads move from points in Arizona, California, Colorado, Idaho, Montana, Nevada, Oregon, Texas, Utah and Wyoming, also from Mexico, to destinations in Utah during the selected four months period.

From interstate and foreign points of origin, during that period, 555 cars aggregating 31,035 tons of ores and concentrates moved to various Utah destinations, on which the total revenue was $191,719.00.

During those same months 3,272 cars (195,076 tons) of ores and concentrates moved intrastate in Utah, with freight charges amounting to $190,573.00.

If the intrastate rates had been increased to the extent authorized for application on interstate traffic, freight charges would have totaled $219,163.00, a difference of $28,590.00. Expanded to a full year, the deficit or loss to the carriers on Utah intrastate ore and concentrates traffic, because of the refusal of the P.S.C.U. to permit the increases sought, would be $85,770.00.

[fol. 336] (Respondents' Exhibit No. 54, Witness Earley, marked for identification)

Exhibit No. 54 (RG-15-A) is a statement showing the history of rates on ore and concentrates from Eureka, Utah, to Midvale and Garfield, from May 1, 1942 to date.

(Respondents' Exhibit No. 55, Witness Earley, marked for identification)

Exhibit No. 55 (RG-15-B) is a statement showing the history of rates from Eureka to International from May 1, 1942 to date.

(Respondents' Exhibit No. 56, Witness Earley, marked for identification)

Exhibit No. 56, (RG-15-C) is a statement showing the history of rates from Lark and Lead Mine to Midvale from May 1, 1942 to date.

(Respondents' Exhibit No. 57, Witness Earley, marked for identification)

Exhibit No. 57, (RG-15-D) is a statement showing the history of the rates from Park City to Midvale, Garfield and International from May 1, 1942 to date.

Reference to Exhibit No. 52 (RG-14) will show that the heaviest movements of ores and concentrates between Utah points taken place under the rates set forth in Exhibits 54 (RG-15-A), to 57 (RG-15-D), inclusive. Also revealed by Exhibit No. 52 (RG-14) is the fact that the preponderance of these movements is of ore and concentrates valued $15.00 per ton and less.

[fol. 337] The purpose of submitting these last four exhibits is to show that for at least ten years prior to May 1, 1953, there had been no substantial increase, or in fact, very little increase of any kind, in any of the rates on ores and concentrates valued $25.00 per ton and under. In other words, for this period no general increases on this low-grade traffic were permitted by the P.S.C.U.

Effective on May 1, 1953, in compliance with the Interstate Commerce Commission's findings in Docket 30961, the P.S.C.U. permitted the full Ex Parte 162, 166 and 168 increases on all ores and concentrates. Prior to that date, the P.S.C.U. had permitted some of the interstate increases on the higher valued ores and concentrates.

The showing made in these exhibits is necessary for an understanding of some testimony that I shall shortly introduce in connection with metal prices and the so-called fixed valuation rule.

As I have testified in connection with Exhibits 52 (RG-14) and 53 (RG-15), the failure of the P.S.C.U. to grant the

X-175 increases on the intrastate movement of ores and concentrates has deprived the carriers of an estimated annual revenue of $85,770.00, to which they are entitled, and a great part of this deficit in revenue would accrue to the carriers from the handling of these low-grade ores and concentrates.

(Respondents' Exhibit No. 58, Witness Farley, marked [fol. 338] for identification)

Exhibit No. 58 (RG-16) is a reproduction of the so-called fixed metal price rule, which is published quite generally for application in most of the tariffs naming rates on ores and concentrates in the West. The rule is largely self-explanatory, but a brief history of its origin and purpose may prove useful here.

After World War II, due to the series of Ex Parte freight rate increase, coupled with rapidly rising increases in the price of metals (see Exhibit No. 60) (RG-18), the metal mining industry was burdened with multiple increases, by reason of that fact that the graded basis of rates, dependent upon valuation, automatically increased rates as metal prices rose.

In addition to this, the industry had to bear the post-war Ex Parte increases in freight rates. To the extent that ores and concentrates rates were increased by reason of advances in metal prices the industry was doubly burdened, since, while practically all other commodities were subject to the current inflationary spiral, the increases in freight rates on those other commodities were limited to those granted in the Ex Parte proceedings.

For this reason the Western carriers collaborating with the mining industry, devised the fixed metal price rule to relieve the industry of the multiple increases explained above. This rule became effective October the 15, 1949, on [fol. 339] interstate traffic, but was not made effective on Utah intrastate traffic at that time because of the failure of the P.S.C.U. to authorize full increases on ores and concentrates. When, as a result of Docket 30961, this action was permitted in Utah, the fixed metal price rule became operative on Utah intrastate rates. This was done May 1, 1953.

(Respondents' Exhibit No. 59, Witness Earley, marked for identification)

Exhibit No. 59, (RG-17) shows the result of the operation of this rule in actual practice. Page 1 of this exhibit deals with the movement of ore from Eureka to Garfield. The movement for the year 1953 has been broken down by months. From January to April of that year, the fixed metal price rule was not in effect. During those four months 362 cars were shipped at valuations not exceeding $5.00 per ton, 207 cars moved under the next bracket, not exceeding $6.50 per ton; fifteen cars under the $8.00 bracket; nine cars under the $10.00 bracket; and no cars under the $15.00 bracket.

For the remaining eight months of the year, during which time the fixed metal price rule was in effect, 805 cars moved under the $5.00 bracket, twenty-four cars under the $6.50 bracket; seven cars under the $8.00 bracket; three cars under the $10.00 bracket; and one car under the $15.00 bracket. It is obvious that the operation of the rule results in a shift of shipments to the lower brackets.

[fol. 340] Page two of this exhibit deals with the movement from Lark to Midvale, which is extremely heavy. The same result will be noted from the operation of the fixed metal price rule on this traffic. The movement here in the $25.00 bracket has practically disappeared and has entirely disappeared in the higher brackets.

Exhibit No. 53, (RG-15) indicates the substantial nature of the interstate movement of ores and concentrates to Utah points. Practically all of this traffic moves at rates which are subject to the fixed metal price rule, yet this traffic bears the X-175 increase. It is only fair, therefore, that intrastate traffic, having now received the benefit of reductions which accrue under the fixed metal price rule, should likewise be subjected to the X-175 increase.

(Respondents' Exhibit No. 60, Witness Earley, marked for identification)

Exhibit No. 60, (RG-18) is a list of the copper, lead and zinc prices for the years 1942 to 1954, inclusive. This information is necessary to a realization of the stabilizing effect of the fixed metal price rule on freight rates. No

longer is this traffic when it moves under tariffs carrying the fixed metal price rule, subject to the fluctuations of the metal price market.

(Respondents' Exhibit No. 61, Witness Earley, marked for identification)

Exhibit No. 61, (RG-19) shows the movement during August and November, 1953, and Februafy 1954, of uranium and vanadium ores from Thompson, Utah, to Nada, [fol. 341] Colorado, and from Green River, Utah to Kalunite, Utah.

The X-175 increase applicable on the interstate movement from Thompson to Nada was removed prior to August of 1953, because similar increase was not applied on this traffic from Green River, Utah, to Kalunite.

The receivers of this ore at Nada and Kalunite had agreed that the basic rates (prior to X-175) were on the proper level, but receivers at Nada complained that because the X-175 increases on interstate traffic, the relationship was disturbed and that the competitive situation demanded that both rates receive like treatment.

For the three month period, the carriers have thus lost $7,220.00 in revenue which, expanded to an annual basis, amounts to $28,880.00.

(Respondents' Exhibit No. 62, Witness Earley, marked for identification)

Exhibit No. 62, (RG-20) shows the carload movement of waste materials from origins outside the State of Utah to Utah destinations during the same four months period, as has been used previously in connection with the movement of coal, coke, ores and concentrates.

While the exhibit does not specifically show these months, they are May, August and November of 1953, and February of 1953. Page 1 of this exhibit is a recapitulation of the basic information shown on the other pages.

[fol. 342] (Respondents' Exhibit No. 63, Witness Earley, marked for identification)

Exhibit No. 63, (RG-21) shows the carload movement of waste materials intrastate in Utah during the months of

May, August and November of 1953, and February of 1954. The exhibit does not contain this information but it should be understood that the figures represent the movements during those months. The information was compiled from reports of the Accounting Departments of the respondents.

Waste material for remelting or resmelting moved from points in California, Colorado, Idaho, Missouri, Montana, Utah and Wyoming to destinations in Utah during the selected four months of 1953 and 1954.

From interstate points of origin, in that period, 167 carloads aggregating 9,822 tons, moved to Utah destinations, on which the total revenue was $79,416.00. During these same months forty-one carloads aggregating 2,308 tons moved intrastate in Utah, with freight charges of $2,065.00. If the intrastate rates had been increased to the extent authorized for application on interstate traffic, the freight charges would have totaled $2,370.00, a difference of $305.00. Expanded to a full year, the deficit of loss to the carriers on Utah intrastate traffic, because of the refusal of the P.S.C.U. to permit the increases sought, would be $915.00.

Mr. Fitzpatrick: I offer in evidence at this time Respond-
[fol. 343] ents' Exhibits 40 to 63, inclusive.

Exam. Witters: They may be received in evidence.

(Respondents' Exhibits 40 to 63, inclusive, Witness Earley, received in evidence)

Mr. Fitzpatrick: The witness is submitted for cross examination.

Cross examination.

By Mr. Sohm:

Q. I believe your Page 12 and Page 14, and possibly some other statements in your testimony, indicate that ores and concentrates as well as coke and coal, run at rates dependent upon their value, commercial value, is that not correct?

A. That is correct, Mr. Sohm, as to coal and coke.

Q. But it isn't correct as to ores and concentrates?

A. Not generally. Most of our rates are subject to a valuation.

Q. Include again ores and concentrates, do you consider uranium ore in the category?

A. Yes, sir.

Q. Does uranium ore run at a particularly high rate or low rate?

A. I don't think I understand what you are trying to get at. If I am to understand that your question means do we handle extremely high grade uranium ore at nominal rates, or rates with a nominal valuation, my answer is no.

Q. All right.

By Exam. Witters:

Q. Does that traffic move on a Section 22 rates?

A. Some of it.

By Mr. Sohm:

Q. The major part of it does not though, isn't that [fol. 344] corrdct?

A. That is right.

Q. Most of your movements are out of Thompson on uranium ores, isn't that correct?

A. But I have no breakdown as to the tonnage, but Thompson is a heavy shipping point, shall we say that?

Q. I am not trying to put you on the spot, I want to know whether to your knowledge you happen to know that it is a heavy shipping spot?

A. That is right.

Q. I am now back to the charges, you correct me if I am mistaken, but does not uranium ores run at a comparatively nominal charge, most of it is low grade, most of it is a gravel type of a product, isn't that true?

A. I think that is right. There are some instances where uranium ores according to the reports in the newspapers achieve astronomical values per ton, but I would say that a lot of it moves at rates that are adjusted for values in the neighborhood of $25.00 or possibly a little bit higher per ton.

Q. The majority of interstate shipments on ores and concentrates are products other than uranium ores, is that not correct?

A. Well I—when you say the majority I have to determine in my mind whether the most of it is non-uranium ore, and I can't say that.

Q. Well, there probably won't be very much uranium [fol. 345] ore shipped into Utah, when there is so much being produced in Utah, isn't that right?

A. No, that is not correct.

Q. Then what is being shipped into Utah is probably a special grade of ore, or a high grade of ore, is that not correct?

A. That is not correct.

Q. Can you state that as a definite fact then?

A. A great deal of the ore that is being imported into the State of Utah, of this category, is low grade.

Q. And it is shipped into what points, can you say particularly?

A. I can give you the points to where the rate has been published, Kalunite is one, right south of Salt Lake.

Q. And that comes from where?

A. It comes from New Mexico, some from Arizona.

Q. What other ores and concentrates move into Utah then from out of state points?

A. Of uranium ores?

Q. No, other than uranium ores?

A. There is a heavy movement from Colorado.

Q. Of what?

A. Well a low grade complex milling zinc ore.

Q. A low grade milling ore, and is that a lower rate also. In other words, because you say it is a low grade zinc ore, is that at a reduced nominal rate.

A. It is a nominal rate for the type of ore that it is.

[fol. 346] Q. Now, draw me a comparison. The ores that are moving interstate are generally ores that run at a higher rate or higher charge than the ores that run intrastate, is that not correct?

A. I didn't say that.

Q. But I am asking you for an answer.

A. No, it is not true.

Q. Most of the items that have to run from out of state are special ores then, is that right, items that are not produced in Utah?

Mr. Fitzpatrick: Do you understand the question?

A. I caught it, Mr. Sohm, but the answer is no.

Q. The items that move interstate are actually competitive with the produce in the State of Utah?

A. Yes.

Q. They are able to retain that competitive relationship then in spite of rates on interstate being higher than the intrastate rates?

Mr. Fitzpatrick: Are you coupling it with the quality of the ore or are you talking from a rate standpoint?

Mr. Sohm: I have already gone through the quality of the ore and we have established that the quality of the ore was similar, that the only thing that is moving that is competitive with Utah intrastate, therefore the question now is, the rates interstate are such that the ores moving from another state can be competitive with the ores in the state. Is that correct?

[fol. 347] A. My testimony included references in some instances where the interstate rates had to be shorn of the Ex Parte 175 increase because of this situation that you point out.

Q. Some of the interstate rates had to have the Ex Parte 175 increase eliminated in order to be competitive with the Utah intrastate traffic?

A. Yes.

Q. And that is the way the rate structure is today on those items, would you say that, Ex Parte 175 is eliminated, that is existing today then on whatever products you are referring to? What percentage of the products that you have referred to in your exhibit would be running to that situation could you tell me, in other words, how much of the interstate shipments are running under a rate under the Ex Parte 175?

A. I can't tell you.

Q. You can't even give a close estimate, one-third, one-half?

A. No, it would be a guess, and I don't think I should guess.

Q. Could you furnish income figures that would show that?

A. Well I imagine they could be furnished yes, not very handily.

Q. Do you have them available at the hearing or in Salt Lake City?

A. No, sir.

Q. And where would you gain the information, in Denver?

A. Well for our interests, I am testifying for all these parties.

Q. I am asking you, where could you gain the information, [fol. 348] I am trying to find out?

A. At the headquarters, of the respondents where they maintain their system figures, accounting figures.

Q. Do you have someone that could gain that information by research into our tariff files, or is that something that has to go into your own——

A. You asked for a percentage of movement.

Q. I will hold in abeyance a possible request on that. Most of the coal used in Utah is produced in Utah, is that not correct? I mean of your shipments?

A. Yes.

Q. The type of coal that comes from out of the state moving into the state is generally a special type of coal or coke, is that not correct?

A. So I have been told.

Q. And that coal or coke is not actually competitive with the coal or coke that is produced in Utah?

A. Yes, it is.

Q. If it is a special type of coal or coke that is used for a special purpose is it not?

A. Yes, sir.

Q. Then obviously the reason that it is coming from the out of state is because in the state they do not produce the special type of coal or coke, isn't that correct?

A. I am not an expert on types of coke. I don't think [fol. 349] I am qualified to answer that.

Q. You don't know then whether the coal or coke shipped from out of the state is competitive with the coal in the state then.

A. Well if I did say it would be hearsay.

Q. That is your answer, you don't know?

A. Yes.

Q. Thank you. So that the comparisons you have made in costs of the shipments of interstate coal and coke as compared with the intrastate shipments of coal and coke may be a comparison between products which are not competitive?

A. I didn't say that, and I don't think you can imply it from my answer.

Q. You have just stated that the movements of coal and coke interstate are not competitive with the movements of coal and coke intrastate?

A. I said that I didn't know that the coal was competitive.

Q. Is that true of coke also?

A. Coke?

Q. Coke.

A. Large coke and fine coke is the only distinction that I know of that is made there.

Q. There is no distinction in quality of coke and coal, as far——

A. Only insofar as a coking coal, or a size of coal makes a difference in the freight rates, but the quality or the use [fol. 350] to which the coal and coke is put, as the distinguishing element in the freight rates, is not generally recognized.

Q. Well——

A. The size more than anything is important.

Q. And the quality in the case, now correct me if I am not correct, didn't you say the size and the quality are the determining factors in the rate on coke?

A. If I did I will correct that——

Q. Your testimony now is the size of the coal and coke also, or is that just one of the products. The size of the coal and coke is a determining factor in rate charges?

A. That is right.

Q. In Exhibit No. 9 of your testimony you stated that increases recently applied in Utah, 162, 166 and 168, ex parte, were generally passed on to the consumer, is that not correct?

A. Exhibit 9?

Q. Page 9 of your testimony, at the top of the page?

A. Yes.

Q. Have you made any kind of studies or appraised yourself in any way of the reduction in the market of coal resulting from the increase to the consumers?

A. Would you state the question again?

Q. Yes. Would you read it back please.

(Question repeated by Reporter)

A. I presume you mean the reduction in the volume of [fol. 351] coal sold? No, I haven't.

Q. Are you aware that the market is substantially reduced in the sale of coal in Utah from general observations?

A. That is something that anyone I think could take cognizance of that. The coal market all over the United States is less than it was five years ago or ten years ago.

Q. The increased freight rates would have a substantial effect on that?

A. No, not in my opinion.

Q. If the increased freight rates are passed on to the consumer it certainly would wouldn't it? In your opinion?

A. That is where they eventually wind up if that is what you want to get out of this cross examining.

Q. But if another increase is applied on freight rates and that increase is passed on to the consumer, that will reduce the market substantially further will it not?

A. I didn't testify to that. I didn't say that was my opinion.

Q. I am asking you now?

A. No.

Q. In your statement on Page 9 was it your intention to infer this that the increase in freight rates which took place May 1, 1953, was not borne by either producer or retailer, that was passed on to the consumer. Did you introduce that with the idea of showing the Commission that Ex Parte 175 could be applied and passed on to the consumer without affecting the producer or retailer?

[fol. 352] A. I made no conjecture as to what it would do as to production other than, if you will recall my testi-

mony I did say that the situation will be watched, and I am merely stating the facts here. Previous experience has shown us that the increase in freight rates and more than the increase was passed on to the consumer, in the retail price at Salt Lake City.

Q. But now my next question and the question I just asked was, did you introduce that or did you make that statement with the intention of showing the Commission that further increases could also be passed on to the consumer, I am asking you what you made that statement for?

A. My motive in introducing that statement was to show what has happened in the past, I am not here in the role of a Prophet.

Q. But you didn't make that statement to indicate that the future increases could be passed on to the consumer, therefore not affect the producer and retailer?

A. The Commission can draw its own conclusions from the statement I made. These are facts.

Q. Thank you. At various places, Page 12 is one; and several other times you have drawn comparisons, made statements that the interstate has brought in more revenue than intrastate, and then you have given a figure, I believe on Page 12 the figure is an estimated annual revenue of $85,770.00 that interstate was discriminated against over intrastate, is that what that figure is supposed to represent?

[fol. 353] A. Well Mr. Sohm, my exhibit and testimony I hope try to convey that that is the amount, the annual amount of revenue that we are short by reason of the fact that we haven't got the increases in Utah.

Q. Now if higher grade ores, and this is an if question, if higher grade ores are being shipped interstate at a higher rate, and lower grade ores are being shipped intrastate at a lower rate, then that figure would be substantially reduced wouldn't it?

Mr. Fitzpatrick: Objected to Mr. Examiner, as an assumption.

Mr. Sohm: I am not assuming anything I am asking for his opinion.

Exam. Witters: He can express his opinion.

Mr. Sohm: I will repeat the question.

Q. If I may restate the question I will restate it this way and make it a little more claer. If low grade ores are being shipped intrastate, higher grade ores are being shipped interstate, then the rates charged interstate will be higher than the rates—I mean the total charges interstate will be higher than the total charges intrastate, is that not correct?

A. I am glad you characterize that question as an "if" question, because it certainly is—the first assumption is wrong.

Q. Well what about the question that I just asked?

A. If your assumption were correct, and it isn't, it is [fol. 354] just as obvious that day follows night that your conclusion is right.

Q. Thank you. Is it your testimony that the type of ore shipped interstate and intrastate are—strike that. That if the increases applied intrastate, that this figure of $85,770.00 will be wiped out and it will be a 00 comparison then?

A. Yes.

Q. That this figure is calculated exactly as to what the discrimination is then above the—the intrastate over the interstate?

A. The only estimate there is to extend four months actual into an estimated annual, the four months contain every single car, every waybill.

Q. The only thing that——

A. That is actual. The estimating part of it comes in expanding it by a multiplication——

Q. I understand, and you used the same number of cars—assuming the same number of cars were moved in the next year as were moved in the past, would that assumption be valid if the rates increase and the rates to the consumers increase, then probably there will be a reduction in your movement?

A. No, sir. Unfortunately for you, you are talking about something now that was fixed with the fixed metal price program.

Q. And back to this $85,770.00, the only thing that would

affect that substantially, because you have used actual figures and projected it at an increased rate, the only thing that would affect that is if the interstate movements were [fol. 355] of a high grade ore and the intrastate movements were of a low grade ore?

A. It has no bearing at all on this figure. The character of the ores interstate versus intrastate would have no more effect on this than——

Q. It would have an effect on it in this way would it not, that the interstate charges on a higher grade ore would be higher than the intrastate charges on a lower grade ore?

Mr. Fitzpatrick: But the record doesn't show that.

Mr. Sohm: No. I am asking him an if question and if he doesn't want to state his opinion alright.

A. I can't answer that. It is purely speculative, and based on what I consider improper assumptions or unsound assumptions.

Mr. Sohm: I will reserve further a question or two. That is all the questions at this time.

Mr. Fitzpatrick: Well let me understand, then you will ask Mr. Earley before he leaves the stand won't you?

Mr. Sohm: Pardon?

Mr. Fitzpatrick: You are not trying to reserve this for later examination during the day, in other words, you will finish your cross examination before Mr. Earley leaves the stand won't you?

Mr. Sohm: Well I have a question or two and if I can check on it before any further cross examination then I will do it, if I cannot I will reserve the right to further question him.

Mr. Romney: I have a question or so.

[fol. 356] Cross examination.

By Mr. Romney:

Q. Mr. Earley, you talked about uranium, I would just like to present my understanding of the present situation on uranium——

Mr. Fitzpatrick: Will you speak up a little bit, we can't hear you.

Q. (Continuing) I would just like to present my understanding of the situation with regard to the competition in handling uranium ores, and see if your understanding is the same.

It is my understanding that there is no choice on either the part of the shipper or the mill, as to the destination of uranium ore. The AEC designates where the ore from each particular mine shall go for treatment. I would just like to ask Mr. Earley if that is his understanding of the question, to get that premise clear in the record?

A. I think that is correct that the only source of—strike that—that the only purchaser would say—this kind of ore is being received either directly or through its agent, and they probably can specify where it moves.

Q. That is true. Now there is some choice in the matter of a mill operator being able to negotiate with the Atomic Energy Commission for receipt of a certain ore, but that is a matter of common procedure, in other words, there is no free market, the shipper has no choice as to whether he ships to Kalunite or whether he ships to Rifle, or whether he ships to Nada, or otherwise. I think that puts [fol. 357] that principle straight there, he has no choice between the mines and the mill so far as handling the destination of the ore. Now there is one other point, isn't it true Mr. Earley, that in the movement of ores and concentrates that mines are not in competition with each other as such. In other words, it isn't like coal where—lead or zinc or copper is shipped into this area for sale and use here, shipped into this area solely for treatment, or a great substantial portion of the treatment, so that isn't it true that mines, say, a lead mine out here at Bingham and a mine over in the San Juan area, are not competitive against each other for the sale of their market?

Mr. Fitzpatrick: Unless Mr. Earley understands the question I believe that should be separated into several questions that could be answered. I don't know whether Mr. Earley can undertake to answer that with the assumptions in it or not.

A. Well I can express what I think Mr. Romney is trying to get out of me, and if he doesn't consider that an answer then I will have to say that I don't know. I think that the competition that exists in the sale of ores and concentrates is between the smelters or the processors rather than the between the producers on the mining level.

Q. Well I think that is very true. But I was trying to bring it back to the mining level, and ask some questions to bring out that there is no competition as such between [fol. 358] the mines as far as the sale of their products is concerned.

A. Well you say no competition, I don't know what degree of competition there is, but I would say that is a correct statement.

Q. It would be slight?

A. Yes.

Q. So that the actual competition of the miner is against the ultimate price?

A. That was a statement.

Mr. Fitzpatrick: May it be understood that these statements are not evidence and——

Exam. Witters: Is that a question, Mr. Romney?

Mr. Romney: Yes, I will put that as a question.

Q. Is it not true that the competition of the miners is against price rather than against each other?

Exam. Witters: Rather than what?

Q. The competitive position of the miner or miners is against price rather than against each other in the sale of their products, or the production of their products?

Mr. Fitzpatrick: This is something not covered by Mr. Earley's direct, I don't know whether he is prepared to answer those questions or not.

Mr. Romney: Well his answer in the first instance is sufficient, I will withdraw the question. Now just one more.

Q. Now Mr. Earley, your assumption on the increases in revenue under X-175 as applied to an intrastate basis [fol. 359] you made that assumption on the basis that present tonnages will continue?

A. That is right.

Mr. Romney: That is all I have.

Cross examination.

By Mr. Manley:

Q. Mr. Earley, turn to your Exhibit No. 41 please.

Exam. Witters: Does anyone want a recess? (No response) Continue.

Q. On Pages 3 and 4 of that exhibit, you show a listing, under the caption in Column 3, "Kind of coal", a statement, coking coal.

A. Yes, sir.

Exam. Witters: What exhibit are you talking about now?

Mr. Manley: I am talking about Exhibit No. 41.

A. I have that exhibit before me opened to Page 3, is that right?

Q. That is right. That coking coal comes from various parts of the country, from Colorado and Oklahoma, and Arkansas I believe?

A. Yes, sir.

Q. That is coking coal for use at the steel plants?

A. Yes, sir.

Q. In your statement of testimony on Page 6, will you refer to that?

A. I have it.

Q. In the last paragraph, the ninth line from the bottom, [fol. 360] "Had the P.S.C.U. authorized the X-175 increase on coal from Columbia, to Geneva, this increase would have been applied to the interstate rates from Carbondale and Sommerset. However, the Ex Parte 175 increase on this interstate movement was removed from the rates from Colorado origins in order to enable producers in Colorado to maintain a competitive position with Utah producers." We are still talking about coking coal, Mr. Earley?

A. Yes, sir.

Q. If provided the user of that coking coal could get

it from no other place, except from Arkansas or Oklahoma, why would the rate have to be reduced from Colorado?

A. Well it is obvious that he can get coking coal from Colorado.

Q. Yes, but why would he reduce the rate on coking coal—there is no competition with it?

A. No competition with Utah coking coal?

Q. That is right, sir.

A. I think there is.

Q. Now wait a minute.

A. There is competition between the coking coal produced at Carbondale, Colorado, and that produced at Columbia, Utah.

Q. Now wait a minute. From Carbondale, Colorado?

A. Yes.

Q. And the coal produced in Utah?

A. Of course.

[fol. 361] Q. By whom, in Utah?

A. Where is coking coal produce in Utah?

Q. By whom is it produced, yes.

A. By the Geneva Steel Company.

Q. They also use this coal from Carbondale and other points in Colorado, do they not?

A. Yes, sir.

Q. They bought it?

A. Yes, sir.

Q. Well wherein lies competition between the two of them?

A. Well, Colorado coal to be sold in competition with Utah coal must absorb the difference in the freight rates.

Q. Why would it be bought in Colorado unless it is an especial type of coal that the steel people want to use?

A. That must be it. It must be desirous.

Q. Was there any competition as you know it between the coal from Carbondale and Sommerset, Colorado, and other mines in Utah, other than the captive mines?

A. This is on coking coal, that only moves to the steel plants?

Q. I understand that, that is what I am talking about too, I am talking about coking coal in each instance, you agree with me that that is true. Now we bring coking coal from——

Mr. Fitzpatrick: Now let's see what is the agreement as to what is true, I don't understand that Mr. Earley [fol. 362] agreed to anything here.

Mr. Manley: He agreed that we were talking about coking coal.

Mr. Fitzpatrick: Oh, fine.

Q. Now that is right isn't it, Tom, that we were talking about coking coal?

A. Yes, sir.

Q. Nothing else but coking coal at this time?

A. That is all.

By Exam. Witters:

Q. Where is coking coal produced in Utah, Mr. Earley?

A. Columbia, Sunnyside, Horse Canyon.

Mr. Manley: All of which, Mr. Examiner, are captive mines.

Mr. Fitzpatrick: Well that is objected to as a statement of counsel. In other words, if counsel wants to put that in in evidence he will have to be sworn, I don't want these assumptions in the record.

Mr. Manley: I was merely amplifying your question, Mr. Fitzpatrick.

Exam. Witters: Well, will Mr. Earley testify to that?

Mr. Earley: I will agree to it.

By Mr. Manley:

Q. Are there any other coking coal mines in Utah other than the captive mines?

A. I don't know.

Q. You wouldn't say that Castle Gate coking coal is not [fol. 363] used for that purpose?

A. Yes, I will agree with that.

Q. Or Hiawatha?

A. That is where I am puzzled.

Q. Nor Spring Canyon?

A. You tell me, Mr. Manley, I will take your word for it.

Mr. Manley: Well they are not.

Q. And do you also understand that the Geneva Mine and the Sunnyside Mine, I mean Geneva, Columbia and

Sunnyside, are capable of producing all the coking coal tonnagewise they require?

A. Of the type that is available in Utah, yes.

Q. Then they buy this coal from Oklahoma and Arkansas and those distant places at high freight rates, and high prices, I suppose, to do—to add something to the coal that they produce in Utah, is that correct?

A. That is a logical assumption.

Q. Then is that assumption also correct with respect to the coal from Sommerset and the other place, what is it?

Exam. Wittors: Carbondale?

Q. (Continuing) Carbondale. Does the Carbondale and the Sommerset coal have something in it superior to the —than the Sunnyside and Geneva coal?

A. I don't know.

Q. Isn't it a reasonable assumption that it has not, that [fol. 364] they would not buy coal and pay a dollar a ton more for freight rates at least, if it didn't add something to it, in the same manner that they do from Arkansas and Oklahoma?

A. I think so.

Q. That is a reasonable assumption. Now Tom, if that is true why is it necessary to reduce the freight rates from Sommerset and Carbondale, if there is no competition with it, if you did reduce the freight rate by the elimination at least of the 175?

A. Mr. Marley, I think we can shorten this up. The producers of coking coal at Cabondale and other Colorado points shown on this page of my exhibit, can sell their coal to the steel mills at a very very narrow margin.

It was represented to us that the difference in the X-175 increase on the interstate movement was enough to keep them, even though they did have a coal which had just as desirable properties, to keep them out of the picture in selling their coal at Geneva.

Q. Do you have in mind that it has some superior qualities possibly?

A. That is not for us to judge.

Q. You don't know that?

A. No, and I so state that I don't.

Q. Well——

A. (Continuing) As you have put the words almost in my mouth it is obvious that it must have some desirable [fol. 365] qualities for the steel company to pay more.

Q. Then your freight rate would produce—provide them—let them into that market?

A. And let us haul the coal.

Q. Now will you please look at Page 2 of your Exhibit No. 41. It is the same exhibit.

A. I have it.

Q. Page 2 shows coal from Rock Springs, Wyoming to Hill Field, Utah.

A. Yes.

Q. With a freight rate of $2.33, that is not an established freight rate tariffwise from Rock Springs to Hill Field, is it?

A. Yes, that is a tariff rate, Mr. Manley.

Q. To 168?

A. Yes.

Q. Isn't that 175 applicable in the State of Wyoming?

A. Yes, but this is an interstate movement.

Q. Then the $2.33 rate there which is lower than the proper rate?

A. That is right.

Q. Can you tell me, sir, how that $2.33 was arrived at?

A. By taking 40 cents off of the rate that would otherwise be in effect.

Q. Was it published?

A. Originally.

Q. And how?

[fol. 366] A. By tariff.

Q. Are you sure of that?

A. Yes, sir.

Q. You are quite sure of that?

A. Yes, sir.

Q. Was it not done by Section 22 rate?

A. Not from my experience to Hill Field.

Q. Are you sure of that?

A. Yes, sir.

Q. Hill Field was excluded from the 22 Section?

A. This was a tariff publication, this particular one.

By Exam. Witters:

Q. Was the Ex Parte 175 increase to be applied to the $2.33 or not?

A. No.

By Mr. Manley:

Q. Should it be?

A. The Examiner said "is it."

Mr. Manley: It is not applied to it, and I said should it be applied.

A. He said "is it."

Exam. Witters: I meant is it applied.

Mr. Manley: It is not applied.

Q. Mr. Earley, in your testimony you have made this statement in this respect, that you have arrived at the revenue received in the four months specified, and you further say that if this was expanded on an annual basis it would be so many dollars?

[fol. 367] A. Yes.

Q. Now you arrived at that by multiplying that revenue by three, did you not?

A. Yes, sir.

Q. Is that factual?

A. I think it is a reliable estimate.

Q. You have chosen four months at your own convenience——

A. No, they are not chosen at my convenience, they are made for each quarter.

Q. They are shown there anyway?

A. Yes.

Q. But have you ever tested exactly over the period of years whether that multiplication of that revenue resulted, or was it just a figure—it was done in every case, now Tom, you know——

A. I know, but it is a month in each quarter——

Q. You know that seasonal matters would affect the coal market at least?

A. Sure I do. I heard you say here yesterday that there was no season any more in the coal industry, they ship the year round.

Q. It was relating, if you please, only to the captive—to the steel coal—that was usually, until recently, too high, and you will recall that was what I was talking to you about, not what you said now, that there was no season—I might state that I agree that there isn't any season in [fol. 368] the coal industry, they keep the freight rate people going.

A. Well I will say this too, that if we keep the captive coal tonnage out of it there wouldn't be anything left for us here to be talking about.

Q. What do you mean by that?

A. If the total production in Utah that is on the rails were shorn of its captive tonnage, the industrial tonnage that goes to the steel mills and other captive tonnage, that is left, it it is seasonal or not, wouldn't make any difference.

Q. You agree there isn't much coal left after that?

A. That is what I am trying to say.

Q. I agree. But this is a matter of multiplication only of the revenue that you received?

A. I stand indicted of that charge, yes.

Q. It is expanded to an annual basis, it is not factual?

A. No, it is an annual, and I don't know how you can get to twelve, with four for the one factor, but using three for the other.

Q. Well I want you to look at your Exhibit No. 48 please.

A. Yes, sir.

Q. Now you set up there, in Column 1, the price alleged on that Utah coal mine, a Carbon County mine is right, and the freight rate from Castle Gate through to Salt Lake City, and the retail prices there, where did you get those prices from?

A. Excuse me, will you give me that file please. They were secured for me out of the Salt Lake City office under [fol. 369] date of April 28, 1954, from some of the producers who have offices in Salt Lake.

Q. Those are mine prices. And what did they say, were those their published prices, Tom?

A. They don't say.

Q. You don't know whether those were prices at which the coal was sold or not——

A. Well I didn't——

Q. Those were listed prices, isn't that right?

A. Well I didn't know that the producers of coal were required to publish their prices.

Q. They do, sir.

A. I will take your word for it.

Q. You have merely then prices which are published prices?

A. They were quoted to us and I think our people have access to reliable sources within the coal industry, wholesale and reatil. We have been until recent years one of the largest customers that your industry had, and I think our people know where to go for the prices, and to assume that the prices given us are reliable.

Q. You have no knowledge as to whether these represent prices at which coal was sold?

A. No, sir.

Q. You have no knowledge whatever?

A. No sir.

[fol. 370] Mr. Manley: I believe that is all. Thank you.

Exam. Witters: We will take a recess at this time.

(Recess taken)

Exam. Witters: Proceed.

The Witness: I would like to clear up a situation that I testified in connection with a few moments ago, and that has to deal with Exhibit No. 41, Page 2, which shows a movement and some revenue figures in connection with the movement of coal from Rock Springs, Wyoming, to Hill Field, Utah. Inadvertently I gave the impression that the $2.33 rate there was a tariff publication. Let me correct that by saying that the rate itself is published in the tariff subject to X-175 increase. However, the carriers did, by the medium of Section 22 quotation, take the X-175 increase off of the rate applicable in connection with this movement. That is all I have on that.

Mr. Sohm: Could I ask these few further questions, Mr. Examiner?

Exam. Witters: Yes.

Cross examination.

By Mr. Sohm:

Q. You are aware aren't you Mr. Earley, that many increases—I mean decreases have been requested or reductions have been requested of the Utah Public Service Commission in the movement of coal in the past, as well as movements of ores and concentrates?

A. Yes, sir.

[fol. 371] Q. That in January, for instance of 1954, the rate in Group 30 to Geneva, Ironton and Springville, was reduced from $2.07 to $1.90, these are rates subject to Ex Parte 175, and also in January the rates from Hiawatha to Ironton reduced from $2.59 to $1.90, the present rate was subject to Ex Parte 175, another in January, all of this on coal was reduced from $2.07 to $1.90. Now will those be increased if the Ex Parte 175 goes into effect?

A. Yes, sir.

Q. As recent as January they asked for a reduction—January, 1954, they asked for a reduction, considerable reduction, and if the increases go into effect they will be increased?

A. What reduction was asked for in January?

Q. Well I am just reading these reductions. All three of them in January on crushed coking coal, and coal. Shall I continue?

A. Yes, sir.

Q. All three of these to which I referred were requested in January on coal and crushed coking coal two of them from $2.09 to $1.90, one from $2.59 to $1.90, and they are tariffs subject to Ex Parte 175. Now my question is, since they were reduced as recent as January 1954, if the increases go into effect will they be applied on them?

A. Yes, sir.

Q. You stated in your statement that there will be—I have forgotten which page—an adjustment of rates possibly.

Mr. Miner: Now just a moment. You say those were [fol. 372] subject to 175 intrastate?

Mr. Sohm: The tariffs are stated in this eay, across the front, Subject to Ex Parte 175. Presumably if they go into effect.

A. If and when.

Mr. Miner: If and when, but they actually haven't been subject to the extent of being connected.

Mr. Sohm: No. These are all intrastate movements.

Q. My question again. You stated in your testimony, and I am not trying to prevert your testimony, I just don't know where it is right now, that these rates possibly will be adjusted if the increase is granted, am I misquoting you?

Q. No. I can probably pinpoint it a little bit better. I said that to points north of Geneva and Provo that the rate on slack coal to that territory will be looked into, and if an adjustment is found to be necessary that adjustment will be made. I further said that last fall, in connection wit the movement of coking—strike that—that last fall the rates on slack coal to Provo, and points intermediate between Provo and the mines, were reduced to not exceed the contemporaneous rate on coking coal to Geneva. In other words, the exact adjustment that you referred to in these requests for subsequent reductions from other mines, such as the Hiawatha, may later on need some collateral adjustment. The general picture is this, that coking coal rates from Carbon County mines to Geneva, of $1.90, in that whole territory, and from more than the captive mines, was made the maximum for slack [fol. 373] coal. Isn't that so?

Q. Well, I presume so. Now the thing I am getting at is that constantly, this is a constant processs, all through 1953 there are reductions named in coal and ore products, that is process of constant change isn't it?

A. Yes, sir.

Q. Now there is a good chance in a lot of those cases, because those reductions were necessary for some reason, that the Ex Parte 175 will not be applied, is that correct?

A. I have no reservation, mental or otherwise, on that score, they will be applied.

Q. And these reductions would all have had quite an effect on these figures that you gave, in other words, they are such reduced rates that they made the intrastate rates and charges as a total quite low did they not?

A. To points south of Geneva and east of Geneva, that has been taken into consideration in our estimates. As I said in my testimony, the adjustments north of Geneva into the Salt Lake valley on the slack coal rates were not taken into consideration in the estimate. Those are still nebulous, they might come about, or they may not.

Q. Well I am speaking only of the ones that have been—the reductions that have been made.

A. That was all taken into consideration, and our estimates are compensated with that consideration.

[fol. 374] Q. Where these reductions have been made?

A. Yes, sir.

Mr. Sohm: Thank you.

Mr. Fitzpatrick: I have one or two on redirect.

Exam. Witters: Very well.

Redirect examination.

By Mr. Fitzpatrick:

Q. Now Mr. Earley, whefe in your testimony on direct or cross examination you have referred to the necessity of reducing rates on interstate traffic, removal of the Ex Parte 175 increases, by reason of failure to secure the Ex Parte 175 increase intrastate in Utah. Would it be your purpose if under this 13th Section, we're permitted to increase the rates intrastate in Utah, that we would put back those increases on the interstate traffic where it was removed?

A. Yes, sir.

Q. Now as far as you are advised is the coking coal and other coal shipped interstate into Utah competitive with intrastate coal and coking coal?

A. Yes, sir.

Q. I think there was one question left. Let me ask Mr. Sohm. You secured the information that you were re-

serving on the matter of that movement of ore, you found that later in the exhibit?

Mr. Sohm: Referring to Mr. Watson's?

Mr. Fitzpatrick: Yes.

[fol. 375] Mr. Sohm: Yes, and I have found what I want and I have asked the questions. That is all. I am satisfied.

Mr. Fitzpatrick: That is all.

Exam. Witters: If there is nothing further of this witness he may be excused.

(Witness excused.

Mr. Sohm: I might state that I have no questions of Mr. Watson either, I don't know if anyone else has or not.

(Off the record)

Exam. Witters: Your next witness.

Robert Crandall Was sworn and testified as follows:

Direct examination.

By Mr. Sohm:

Q. Will you please state your name?

A. Robert Crandall.

Q. And your residence?

A. Salt Lake City, Utah.

Q. By whom are you employed?

A. I am employed by the Public Utilities Commissioner of the State of Utah.

Q. How long have you been so employed?

A. Since December 1, 1953.

Q. Have you had experience in preparing economic exhibits, in connection with railroads, on cost, revenues, and densities, etc.?

A. Yes, I have prepared several exhibits on revenue, [fol. 376] expenses, ton miles, etc., for the Public Service Commission.

Q. Previous to that have you had experience working on economic studies of the railroads?

A. Yes, I worked in the University of Utah from June 1st

to December 1st on an economic survey of the Mountain Pacific Territory, with special emphasis on railroad traffic.

Q. Have you prepared or has there been prepared under your direction exhibits for this particular hearing?

A. Yes. There are three exhibits that have been prepared by me, or under my direction, at this time.

Mr. Sohm: I would like at this time to have the exhibits, first in the group, headed "Utah Intrastate Freight Revenue, Expenses, Operating Ratio and Ton Miles per Mile of Track, as Compared to the System Totals", be marked for identification.

Exam. Witters: That may be so marked, as Respondents' Exhibit No. 64.

(Respondents' Exhibit No. 64, Witness Crandall, marked for identification)

Mr. Sohm: And the second sheet, "Comparison of Statistics for the Denver & Rio Grande Western Railroad of Rail Line Operations of Utah Compared to Colorado and the System." May I have that marked for identification.

Exam. Witters: It may be marked Exhibit No. 65.

(Respondents' Exhibit No. 65, Witness Crandall, marked for identification)

[fol. 377] Mr. Sohm: And last, "Comparison of Utah Intrastate Revenue Per Ton Mile as Compared to Revenue Per Ton Mile of all Interstate Shipments Originating in Utah in 1952." May I have that marked?

Exam. Witters: It may be marked Exhibit No. 66.

(Respondents' Exhibit No. 66, Witness Crandall, marked for identification)

Q. Would you proceed to identify these exhibits, as they have been marked?

A. First of all, Exhibit No. 64 is a comparison of the interstate railroads, Denver & Rio Grande Western Railroad, Southern Pacific Railroad, Union Pacific Railroad, and Western Pacific Railroad, comparing intrastate statistics as given in the annual reports to the Public Service Commission, as compared to the system statistics, also given in

the annual reports of the railroads to the Public Service Commission of the State of Utah.

We have compared the revenue and the expenses, and operating ratio, for intrastate operations with the system statistics of revenue, expenses, and operating ratio.

In other words, just to clarify what I mean, in the first column of intrastate statistics for 1950, we have shown revenue of 25.6 million dollars and expenses of 15.7 million dollars.

Then taking the operating ratio, that is, comparing the revenue and expenses, we obtained an operating ratio of 61.30.

This only covers freight statistics—it is not total operating ratio, including passengers.

[fol. 378] We are comparing that to the system statistics of the Denver & Rio Grande Railroad of 60.7 million dollars, 38.3 million dollars of expenses, giving an operating ratio of 62.98.

This exhibit is self-explanatory, showing instances where the intrastate operating ratio is less than the system operating ratio.

Q. Did I misunderstand you, did you say the 62.98 was operating revenue or operating ratio?

A. Operating ratio. This was done for the years 1950, 1951, 1952, and 1953, for these four interstate railroads, comparing intrastate statistics to the system statistics.

Then we have shown a figure of density. If you will refer to the bottom of the page, you will see that what that refers to is ton-miles per mile of track, that is, taking the ton miles; as given in the annual report, and dividing that by the main line miles of track, gives the ton-miles per mile of track.

This is given for the four railroads, for the four years I have indicated, and compares the revenue ton-mile per mile of track in the state to the entire system for these four years.

All these figures were copied from the annual reports, excepting the operating ratio of intrastate statistics. That was arrived at by a simple mathematical computation of the two figures of revenue and expenses, shown on the sheet.

Q. How does the density, intrastate, compare to the system density?

[fol. 379] A. In all instances the density within the state is greater than the density over the entire system of the railroads.

Q. Is that an important factor to consider?

A. Yes, it would, if they can haul, if they have a greater amount of rates, it cuts down their per unit cost that way.

Q. You can continue now?

A. That is all I have on Exhibit No. 64.

Q. Go on to 65?

A. This Exhibit No. 65 is a comparison of statistics for the Denver & Rio Grande Western Railroads of rail line operations of Utah compared to Colorado and the system.

This material was taken from the annual reports filed by the Denver & Rio Grande Western Railroad with the Public Service Commission of Utah and Colorado, and we have indicated for 1952 and 1953 these comparisons of statistics on train miles, which in Utah is less than the train miles in Colorado, and we have given the total train miles of the system, which is largely made up of train miles in Utah and Colorado, there are some train miles in New Mexico, but nearly 100 percent is in Utah and Colorado.

Then we have given the locomotive miles in Utah and Colorado, which is less in Utah than Colorado.

We have given the loaded freight car miles, that is, a freight car that is loaded, comparing Utah and Colorado.

Also we have given the empty freight car miles of Utah [fol. 380] and Colorado for these two years.

Then we have given the total freight car miles. If you will look in the first column there, for Utah, 1952, the total freight car miles is shown there to be 110,544,578, and that is the addition of loaded freight car miles, the empty freight car miles, and the caboose car miles. I didn't put that in, feeling that it wasn't exactly necessary here, and no computation is based upon caboose freight car miles.

Those three will give a total of 110,544,578.

These are all copied figures from the annual reports.

Next is given the ton miles of revenue freight, also copied from the annual reports.

Next is given the tons per freight car, which is a computated figure, dividing ton miles by the total freight car miles, 110,544,000 into 2,688,363,000, and that gives a figure

of 24.32 tons per freight car for Utah, as compared to Colorado, 21.25 tons per freight car, and as compared to the system of 22.47. Utah was above Colorado and above the average.

Next is given a computation as to tons per loaded freight car, and that was obtained by dividing the ton miles of 2,688,563,000 ton miles by the loaded freight car miles of 78,911,000, giving 34.07 tons per loaded freight car, 1952, compared with Colorado which had 29.95 tons per freight car, and the system, which had 31.65. Utah again was above the average, and above Colorado.

[fol. 381] Next we have given the tons per train, which was obtained by dividing the 2,688,000,000 ton miles of revenue freight by the train miles, 1,642,000, giving tons per train of 1,637, as compared with Colorado, in 1952, of 1,303, and as compared with the system of 1,428 tons per train. Again Utah was above Colorado and above the average for the system.

Then next we have given a computation of tons per locomotive, which was obtained by dividing the ton miles by the locomotive miles, which gave 914 tons in Utah, as compared with 723 tons in Colorado, and as compared with the system of 794.

The next figure, tons per mile of track, was a figure taken from the annual reports, which shows the tons per mile of track in Utah as compared with Colorado, and as compared to the system. Again Utah was above Colorado and the system.

Q. Why is it important to show that Utah exceeds Colorado and the system in each of these last four items?

A. There again the density, tons per train and tons per car, is greater in Utah than Colorado or the system, which means that their per unit cost is lower, they can get more on one car.

Q. Does that have any effect on the expense of upkeep of track, and other overhead?

A. Yes, it should have.

Q. In what way?

A. What I mean is it doesn't cost them so much to haul the freight, you see, you get more density on a car and more [fol. 382] density on a train, you are getting more freight

hauled on that train for the same amount of cost, compared with even Colorado.

Q. Would you go on now with Exhibit No. 66?

A. Exhibit No. 66 is a comparison of the Utah intrastate revenue per ton mile as compared to revenue per ton mile of all interstate shipments, originating in Utah in 1952.

Now this was taken from the carload way bill statistics, one percent sample, for 1952, and the statement numbers are listed there.

These are divided into agricultural products, products of animals, products of mines, manufactured and miscellaneous products, and a total of all products.

Products of the forest are not included in this. There was such a negligable movement of forest products, that they were not included for that reason.

Under the column "Utah to Utah, Intrastate Shipments", the one percent sample showed that Utah had a revenue, for agricultural products, of $166,500.00, as compared to the revenue for all shipments that originated in Utah and terminated outside of the state, of $3,615,900.00.

Next is given ton miles, which, in Utah, in intrastate shipments, amounted to $6,470,000.00, and interstate shipments were $317,070,000.00.

It was a matter of dividing the ton miles by the revenue—the revenue by the ton miles to get the revenue per ton mile, [fol. 383] which in Utah was .0257 cents, whereas on the interstate shipments it was .0114 cents.

This was done for products of animals, which showed that the revenue per ton mile on intrastate shipments was .0415 cents, and interstate shipments .0271 cents.

Products of mines in Utah, .0106 cents on intrastate shipments, and .0074 cents on interstate shipments.

Now manufactured and miscellaneous products, revenue per ton mile was .0363 cents, and for the interstate shipments .0152 cents.

Now for the total of all products, the revenue per tone mile was .0121 cents, intrastate, and for all interstate shipments it was .0106 cents.

This shows that in each instance here the revenue per ton mile, within the state, was less than the revenue per ton mile on shipments outside of the state.

Now of course part of this revenue——

Exam. Witters: I think you misstated yourself there.

A. (Continuing) The revenue per ton mile on shipments within the state is more than the revenue per ton mile on interstate shipments, originating in Utah.

Q. Why did you select Utah as the originating point for interstate shipments?

A. Well this case today involves Utah, and this shows that revenue on shipments within the state are higher than [fol. 384] shipments interstate—material that originates in Utah.

Q. There was no selection in it particularly, was there?

A. No, there was no selection on it.

Q. Did you take all of the interstate shipments from Utah to the other states?

A. All of the interstate shipments, that is right.

Exam. Witters: As shown by this one percent sample?

The Witness: Yes, that is correct.

Q. In your opinion do these exhibits indicate that there is no discrimination against interstate commerce by Utah?

A. Well it would seem, it is quite evident here, as shown by the one percent sample, they get a higher revenue per ton mile on interstate shipments—I mean, we get a higher revenue per ton mile on intrastate shipments—we are paying more on intrastate shipments——

Q. The railroads get a higher—state that again——

A. The railroads get a higher revenue per ton mile on shipments within the State of Utah than on their interstate shipments, and we are paying more revenue, as shown by this exhibit.

Were some of your statistics taken before the increases were applied May 1, 1953?

A. These cover the entire year of 1952—that is correct.

Q. The picture is still the same, even despite the fact that there were not increases applied intrastate, which were applied interstate, in 1952?

[fol. 385] A. That is right.

Mr. Sohm: Thank you. That is all. I wish to offer in evidence at this time Exhibits nos. 64, 65 and 66.

Mr. Fitzpatrick: I ask that the receipt of them be reserved pending cross examination.

Exam. Witters: Very well.

Cross examination.

By Mr. Fitzpatrick:

Q. Now to begin with, Mr. Crandall, the heading on Exhibit No. 64, on the left hand side, reads "Intrastate Statistics"?

A. Yes.

Q. Now it is a fact is it not, that that includes both interstate and intrastate traffic in Utah?

A. That is correct.

Q. So that it isn't intrastate in the sense of movements?

A. Meaning that it is interstate and intrastate movements within the State of Utah.

Q. Now all bridge traffic, moving across the state of Utah, that has neither origin or destination in Utah, is included in those statistics, in the left half of Exhibit No. 64?

A. That is correct.

Q. Now taking up the heading, where it reads "Utah Intrastate Freight Revenue". Shouldn't that read "Utah Intrastate Freight Service Revenue"?

A. That would probably clarify it.

[fol. 386] Q. And where it reads "Expenses", that should read "Freight Service Expenses"?

A. That is correct.

Q. And where it reads "Operating Ratio", that should read "Freight Service Operating Ratio"?

A. For interstate and intrastate traffic.

Q. Yes.

A. In Utah.

Q. Now what mileage was used in obtaining the density?

A. It was the main line miles as given in the annual reports of the various railroads. It was 621 miles, as I recall, for the Denver & Rio Grande Railroad.

Q. You didn't include all of the branch line mileage in Utah, did you?

A. The branch line mileage is not included.

Q. And a very substantial amount of the intrastate traffic in Utah originates on the branch lines, isn't that so?

A. Yes, that is correct.

Q. By not including the branch line mileage, in Utah, you have substantially expanded the density figure that you show, haven't you?

A. It is a substantial expansion, yes, I agree with you there.

Q. In other words, if you would use the branch line mileage and the main line mileage, the density figure would be substantially reduced?

[fol. 387] A. That is substantially correct, and it would be the same way with the system, branch lines of the system.

Q. Why didn't you use the branch lines in Utah, and the branch lines on the system, in addition to your main line mileage?

A. I couldn't answer that—there was no particular reason that we didn't do it. We just left it off.

Q. And to the extent that the branch line mileage in Utah would be greater in proportion to the main line mileage than in some other states, in which the railroads operate, it would have further effect on the study, wouldn't it?

Mr. Rampton: Just a minute. I object to that on the ground that it assumes something not in evidence. There is no evidence in this record that the branch line mileage in the State of Utah is proportionately greater than the branch line mileage in Colorado.

Mr. Sohm: I join in that objection.

Exam. Witters: The objection is overruled.

Q. Why did you discard——

Mr. Rampton: This under the ruling he should answer the question, and not ignore it.

Mr. Fitzpatrick: I dropped the question, and I am ready for another one.

Exam. Witters: Do you withdraw the question?

Mr. Fitzpatrick: I withdraw the question.

Exam Witters: Very well.

[fol. 388] Q. Why did you discard the branch line mileage in Utah in making these statistics?

A. There is no reason why we didn't, we didn't put it in, that is all.

Q. By not doing so you have distorted the density figures, haven't you?

A. Well I do not know that they are distorted——

Mr. Rampton: Well now, I object——

Exam. Witters: That is repetition, isn't it?

Mr. Fitzpatrick: That is right.

Q. Now Mr. Crandall, in the reports—first, let me ask you, this expense figure that you show in the left half of Exhibit No. 64, for each railroad, is obtained under a formula that is rather controversial as between the railroads and the statistical department of the Public Service Department of Utah, isn't that so?

A. Yes, it is.

Q. And don't those annual reports, in substance, contain this provision, "In compliance with the requirements of the Public Service Commission of the State of Utah"—I am reading the one from the Union Pacific—"The Union Pacific Railroad Company furnishes statements of earnings and expenses in Utah, in compilation of which it has apportioned revenue on interstate traffic, and expenses incurred in connection with such traffic through Utah, and other states, on the basis as prescribed by the said Commission.

"The company certifies to the correctness of the figures [fol. 389] reported herein, ascertained according to the formula as prescribed, but in so doing it is not to be understood as admitting or approving the correctness of the formula, which does not in fact afford a basis for comparing operating costs in the different states, nor does the report reflect the actual cost of operation in the State of Utah."

That is appended to the Annual Reports of the carriers, filed with the Commission of Utah, isn't that true?

A. On the Union Pacific, yes.

Q. How about the other railroads?

A. I am not sure about that. As I recall the Denver & Rio Grande doesn't. I am not sure.

Mr. Rampton: If the Examiner please, I do not think we are getting anywhere, in this argument between counsel

and the witness, with regard to the method of allocation. Now that has been gone into rather thoroughly in No. 30416, and the railroads were ordered by the Interstate Commerce Commission, in that case, to make an exhibit, which they should present as to the basis of their allocation.

Now that exhibit has been prepared, and has been distributed to the parties in No. 30416, but it hasn't yet been assigned an exhibit number—we just got a copy last week.

Now if counsel has no objection to that exhibit being included by reference in this record, then I think——

Mr. Fitzpatrick: Well, I would certainly object to it, [fol. 390] because I am not in that case, and I do not know anything about it.

Mr. Rampton: Well it was prepared by your own railroads.

Mr. Fitzpatrick: I am pretty well satisfied if there has been any such matter filed, there were some reservations on the part of our railroad in connection with it.

Mr. Rampton: I am sure Mr. Kroll is familiar with the document.

Mr. Kroll: I do not have the exhibit.

Exam. Witters: It might shorten this to introduce the formula.

Mr. Ramption: I think the formula is contained in that exhibit, Mr. Examiner. It is a rather complex formula. That is what the Commission asked for, as I understand it, in No. 30416, and that is what the railroads purport to be furnishing.

Exam. Witters: We are trying to make a record here, and we can't use that record.

Mr. Rampton: No, what I am suggesting here is, we have a copy here of the formula that was prepared and presented by the Railroads in the 30416 case. Now what we are asking is that this be marked and accepted as an exhibit in this case, as a basis upon which the railroads made their allocation between intrastate and interstate in the reports to the State Commission.

Mr. Fitzpatrick: I would certainly object to it, Mr. Examiner. This is strictly a revenue case, and the question for determination is as to the discrimination between interstate and intrastate rates.

[fol. 391] Frankly I do not know what is involved in this other proceeding, and I would certainly object to any offer or introduction of that formula.

Exam. Witters: Would you like to have the formula prescribed by the Public Service Commission of Utah put in the record?

Mr. Fitzpatrick: Well I do not know—I do not think they have a formula.

Mr. Sohm: Well I object to any such statement as that. The offer of Mr. Rampton shows exactly what they are asking. They want to know how we got these figures, the State Commission got them, and why the railroads gave them to us, and this offer of Mr. Rampton has made shows exactly how that is done, and the Commission can refer to it and decide themselves whether it is valid or not.

Mr. Fitzpatrick: Co-counsel informs me that the Utah Commission formula is an arbitrary formula, to which the railroads do not subscribe in any sense.

Exam. Witters: Well that is beside the point—do you want it in the record.

Mr. Fitzpatrick: I don't.

Exam. Witters: Very well.

By Mr. Fitzpatrick:

Q. Turning to Exhibit No. 65, Mr. Crandall, the figures you how on the left hand side there, for Utah, under '52 and '53,—that does not include all train miles, does it?

[fol. 392] A. That is all train miles, it isn't all locomotive miles.

Q. Have you included all the locomotive miles?

A. Yes, all the locomotive miles, according to the report given there. That figure was taken from the annual reports, locomotive miles, 2,940,262.

Q. Have you included the light and helper mileage in there?

A. I am sure that it is in there, I can refer to the exhibit but as I recall that is included in the locomotive miles.

Locomotive miles, that includes Principal miles, that is the same figure as the train miles, helper, light, train switching and yard switching—that is all the categories given under locomotive miles.

Q. And the figure as set forth here includes all those?

A. That is right.

Q. Did you say yard switching?

A. It includes yard switching, yes.

Q. What does yard switching have to do with locomotive miles— What does it have to do with train movements?

A. It is included in there as total amount of locomotive miles necessary to move a certain amount of freight. It is all part of it, you have got to switch the cars to make the train and it is a matter—I know it is not directly related to the actual movement of the train from one state to another state.

Q. You use your locomotive miles in arriving at your tons per locomotive don't you?

[fol. 393] A. That is right.

Q. So that is affects your final figures on tons per locomotive doesn't it?

A. Yes.

Q. Now then your total freight car miles, in those first two columns under the heading of Utah, that includes caboose miles too doesn't it?

A. That is right.

Q. Those miles are not productive of any revenue, they don't haul any traffic.

A. No, but I have included those in the total figure—I just didn't list them, they are included.

Q. By doing that you reduce the tons per freight car total, don't you, by including those locomotive miles in there?

A. Yes, that is right, that reduces that. The caboose miles is about the same as the train miles. I could give you the exact figure if you want. There wasn't any reason why I left them out.

Q. It also reduces the tons per freight car loaded, doesn't it?

A. Well not the freight cars loaded, it doesn't do that, but it would on the total freight cars.

Q. Your next figures there under Colorado, years 1952 and 1953 those figures are for a much more ownerous territory, with a lot of narrow gauge track, In Colorado, isn't that so?

A. As I understand it, it includes all the track.

[fol. 394] Q. Do you know what effect narrow gauge has on operations?

A. Well, it would probably be a detriment to efficiency. I do not imagine that they get the same amount of efficiency out of narrow gauge as they do out of wide gauge, or the regular gauge.

Q. So in that respect you are comparing unlike things, for you have included your narrow gauge. In Colorado, you are comparing unlike things, when you compare it with Utah, aren't you?

A. That is right, so far as the narrow and wide gauge track is concerned.

Q. Returning to your exhibit No. 66. In the right hand column—why did you select the interstate traffic from Utah to other states?

A. Well, if I understand your question correctly, there was no particular reason for selecting the shipments from Utah. I felt that it would be a good comparison to make shipments originating in Utah interstate with intrastate shipments.

Q. How was it that you didn't use the interstate terminating in Utah, in contrast to the interstate shipments terminating outside of Utah?

A. There was no particular reason for that—we just didn't make that comparison.

Q. Now this products of animals, that would include fresh meat and packing house products, wouldn't it?

A. Yes, I believe that is correct.

[fol. 395] Q. And the market for fresh meat and packing house products, produced in Utah, is in California, West Coast States, and in the Eastern States, isn't that so?

A. Mostly in the west.

Q. That would mean very long hauls on the products of animals, out of Utah, on your interstate shipments, wouldn't it?

A. That is right, it would.

Q. As the length of hauling increases, the ton mile earnings decrease, isn't that so?

A. Yes.

Q. On the other hand, your products of animals, intra-

state in Utah would have short hauls as compared to the long hauls interstate, that you are referring to, isn't that right?

A. They would be shorter hauls, yes.

Q. Considerably shorter?

A. Yes, they would be.

Q. Now is what we have discussed——

A. However, there is one thing that I think ought to be brought up there, and that is, I know the major markets for animal products is Salt Lake and Ogden, the metropolitan area, but a lot of that is moved by truck, and there is a possibility that most of it that goes by train might be a longer haul than just maybe within the metropolitan area, the northern part of Utah, where most of the plants are located.

Q. Well at the maximum, it would be a comparison, well, maybe three or four hundred miles in Utah, with [fol. 396] almost a two thousand mile haul interstate, wouldn't it?

A. Well most of it goes to the west coast.

Q. Maybe I have stretched the mileage a little too much—twelve hundred miles to the Pacific coast and two thousand miles to the east coast, isn't that right?

A. It is about seven or eight hundred miles to Los Angeles, San Francisco, or Seattle.

Q. What we have discussed as to products of animals, isn't that largely true of your agricultural products?

A. Yes, I would think they would be the same.

Q. Now as it relates to all of the commodities, shown on Exhibit No. 66, information you secured doesn't necessarily relate to the same individual commodity classes does it?

A. Not necessarily.

Q. Again taking all of the commodities you have listed in Exhibit No. 66, how did you handle commodities outbound from transit points that were on the balance of the through rate?

A. I don't quite understand.

Exam. Witters: These were taken directly from the carload statistics, as I understand.

A. It lists Utah to other states, and it doesn't matter where it originated, or terminiated in Utah, intrastate movements, they are all included in that, and it doesn't matter where they originated in Utah on interstate movements, they are all included in that—it does give the destination points by states, and that is all.

[fol. 397] Exam. Witters: Just for clarification, this column is headed "Utah to all other states". Does that include only traffic from Utah, or does it include traffic between Utah and——

The Witness: Just from Utah.

Exam. Witters: From Utah.

The Witness: Yes.

By Mr. Fitzpatrick:

Q. Do you recall whether the information you have showed that these were transit movements on the balance of the through rate, where at times there was no balance?

A. I do not recall about that.

Q. Now we have discussed the products of animals and agriculture, is somewhat the same situation true as to the remaining three commodities, listed on the Exhibit, Products of Mines, Manufactured and Miscellaneous products, and total of all products—two of them that should be—in other words the interstate haul outbound from Utah; is substantially larger or longer than the intrastate haul, isn't that true?

A. Yes, that is generally true, for they are longer.

Mr. Fitzpatrick: That is all.

Cross examination.

By Mr. Miner:

Q. Mr. Crandall, referring to this Manufactured and Miscellaneous Products, are you sure that under that right hand column that that just included products that originated [fol. 398] in the state and moved out?

A. That is my understanding unless I have made some wrong figures, but that is what I understood.

Q. In other words, would you say here that there was

thirty-five million dollars in revenue on just Manufactured and Miscellaneous products that originated and moved out of the State of Utah—could there be that much?

Mr. Sohm: I object there, the witness has testified that these were copied from the one percent sample way bills, which are designated below here.

Examiner Witters: Do you have those with you?

Mr. Sohm: If you want to look at them,—

The Witness: I can get them.

Mr. Miner: Let me ask another question.

Q. Counsel asked you something about transit billing, do you know what transit billings are?

A. I am not entirely familiar with that, no. I just told you that I do not know the exact origins or destinations of intrastate movements, existing within Utah—that is where the one percent sample came from.

Q. Well then these Manufactured and Miscellaneous products may include manufactured and miscellaneous products moving on transit billing then.

A. I am sorry, I do not know whether they do or not. I could probably——

[fol. 399] Q. Well do you know, I am asking you whether you know this is a fact or not, that there is a lot of merchandise that comes into the state of Utah, and placed in warehouses here, and then later moved out.

For instance, The American Tobacco Company, they ship a consignment of tobacco to the Lindsay warehouse and put it in storage there, and later it is moved out from the Lindsay warehouse——

A. I see what you mean.

Q. (continuing) and a lot of other products that come in and move out on transit billing. Now is that included in this?

A. I do not know whether it is or not. I mean, it could probably be.

Q. And more than likely is in that figure, is it not?

A. Yes.

Mr. Sohm: If counsel has any questions on any of these figures, we will try to check them one by one.

Mr. Miner: I would like to know on Manufactured and Miscellaneous Products, moving from Utah to other states, if this is what it say it is, or if this does not actually include all transit products under that heading.

Mr. Rampton: I object to the form of the question. There is nothing in the exhibit to indicate that it doesn't include in transit items.

Mr. Miner: If he will say then that it doesn't include [fol. 400] transit items, that will answer the question.

The Witness: I do not know whether it does or doesn't because I just had the one percent way bill samples, and I do not know whether it does or doesn't. I imagine they are. The way I understand a way-bill is made up, there is a new way-bill for every shipment, and if there is something comes in from North Carolina, comes into Utah and is stored here for awhile, and moves on, there should be a new way-bill, and I would imagine very definitely that it would be considered as originating in Utah where actually it wasn't manufactured in Utah.

Mr. Sohm: I would like to say that the witness can read every detail connected with these way-bill samples, and tell what they include and what they do not include, into the record.

Mr. Miner: Well, I think his answer so far is satisfactory.

Mr. Miner:

Q. Now on this question of products of mines, under the Utah intrastate shipments, that would include all of the movements of iron ore from Iron Mountain and Iron Springs into Geneva?

A. Yes.

Q. As well as the ores of various types from Keithley and other places, to the smelters.

A. Yes.

Q. Now in the right hand column, comparing the movements in Utah only 9 million dollars and that moving out of Utah into other states is 29 million dollars. Would that likewise possibly include some transit.

[fol. 401] Mr. Sohm: I object to the question, as being

completely repetitious, and the figures being absolutely copied from these way-bill samples, if they want to check them, we will go through them——

Exam. Witters: He says he does know whether they include transit shipments or not.

Q. So far as you know it may?

Mr. Sohm: I object.

Mr. Miner: I think he can answer that. I am asking what he knows about it.

Exam. Witters: Your answer applies to all four of these items listed here.

The Witness: I didn't make up these one percent way-bills, and I do not know exactly whether they do or they don't.

Mr. Miner: Alright. That is all.

Mr. Rampton: I have just a question or two to ask.

Exam. Witters: Very well.

Cross examination.

By Mr. Rampton:

Q. You are employed by the Public Service Commission of Utah, are you not?

A. Yes.

Q. And you are acquainted with the appearance of the annual reports of the various railroads are you not?

A. Yes.

Mr. Rampton: May this be marked?

[fol. 402] Mr. Sohm: That is just the addition of the figures——

Mr. Fitzpatrick: Well, wait a minute here, now, are we going to be furnished copies?

Exam. Witters: Can you tell me what the purpose of this is, Mr. Rampton?

Mr. Rampton: It is for the purpose of showing the basis used by the railroads for making the allocation. They have been raising a fuss about it, it is right in there own annual report, and I think we ought to have it in the record, Mr. Examiner.

Exam. Witters: Wouldn't it be simpler to just put the formula in?

Mr. Rampton: If they will stipulate to it, that they made it, we can have a copy of that document made, and placed in the record instead of the whole report. If that is agreeable.

Mr. Fitzpatrick: I have no objection to the introduction of the—what is this supposed to be——

Mr. Rampton: This sheet is——

Mr. Fitzpatick: That is the formula.

Mr. Rampton: Yes, this sheet that I hold in my hand is the formula.

Mr. Fitzpatrick: All right, no objection.

Mr. Rampton: May this copy by marked, and then a copy which we will verify for the railroads substituted in the [fol. 403] record.

Mr. Ftizpatrick: That is agreeable.

Exam. Witters: I do not quite understand what you mean. Can't we agree that the reporter will copy this into the record?

Mr. Rampton: That is agreeable, yes.

Mr. Sohm: Okey.

Mr. Rampton: Mr. Reporter, the portion we wish copied into the record is that which is on the multigraphed sheet. That is attached to page 706.

Mr. Miner: And may we at the same time have a stipulation, counsel, that the part that Mr. Fitzpatrick read into the record a while ago, as being attached to and made part of the oath, appears on page 917 of this record.

Mr. Rampton: It appears on all of your reports—it is so stipulated.

Mr. Miner: Thank you.

Mr. Rampton: May we at this time go off of the record for a few minutes?

Examiner Witters: Yes.

(Discussion off the record)

(Reporter's note: The formula above stipulated to be copied into the record is as follows:

"Rules for the determination of the earnings and expenses applicable to each state, prescribed by the Railway

[fol. 404] Commissioners of Iowa, Nebraska, and Colorado and other states, and used by the Union Pacific Railway Company. These rules were recommended by a resolution adopted by the Twentieth Annual Convention of the National Association of Railway Commissioners.

1. East State is credited with all revenues derived from its intrastate traffic.

2. Transportation revenues from interstate traffic are apportioned to states, in each case, on the basis of the mileage traversed in each state by the individual passenger or the individual shipments.

3. Revenues from other sources than the transportation are apportioned to all states through which the company's lines run, on the basis of the road mileage in each state.

4. The total operating expenses are apportioned to all states through which the company's lines run, on the basis of the train mileage in each state.

Information necessary for the application of rules one and two to express and mail business not being available, the following bases are used for the apportionment of the revenues:

Express revenues, reported in total by the Railway Express Agency, Inc., is apportioned to all states through which the lines of the Union Pacific Railroad Company run, on the basis of the express car-miles in each state, treating as express car-miles, one half of the mileage of the cars carrying baggage and express; and one-third of the [fol. 405] mileage of cars baggage and mail and express.

MAIL

Revenue from space authorization on mail routes, where the authorizations cover movements wholly within one state, will be assigned to that state, and it will be reported as 'intrastate'.

Where the space authorization covers a mail route that extends over, or into two or more states, the revenue allocated to that route is apportioned monthly to each state

on the basis of the road mileage of each space authorization in each state."

Mr. Rampton: Now at this time I would like to have this document marked for identification.

Mr. Fitzpatrick: Now just a minute, Mr. Rampton, wouldn't that more propertly come in your direct evidence. I was just wondering if we couldn't finish up with Mr. Crandall here.

Mr. Rampton: We are on cross examination, and I suppose I can identify an exhibit if I wish, can I not?

Mr. Miner: I wouldn't think you would unless it is something he knows something about.

Mr. Rampton: You can make your objection if you want to. Mr. Examiner, I am going to ask that this be marked.

Mr. Fitzpatrick: We are going to object to this, Mr. Examiner, object to its receipt in evidence, I might just as well tell you in advance, and we are going to object to any questions in connection with it. It has no relation whatever to this case.

[fol. 406] Exam. Witters: This relates to the eleven western states.

Mr. Rampton: There is a section there relating specifically to the state of Utah.

Exam. Witters: Is that the portion that you want introduces?

Mr. Rampton: Well I hate to tear the book apart. I would a lot rather introduce the entire book, because there are explanatory notes in the front of it that apply to each state.

Mr. Fitzpatrick: I think we would have to require of counsel at this time that he supply all parties of record with copies.

Mr. Rampton: I am offering it to be marked now. Why don't you wait until I offer it before you make your objections?

Mr. Fitzpatrick: I am just telling you and the Examiner in advance.

Mr. Rampton: May I have this marked.

Exam. Witters: Well, it can be marked for identification.

(Respondents' Exhibit No. 67 Witness Crandall, marked for identification)

By Mr. Rampton:

Q. Mr. Crandall, you have worked in the 30416 and the 30660 cases, have you not?

A. That is right.

Q. And you are aware, are you not, that the railroads have been asked by the Interstate Commerce Commission to furnish for that record a statement of the basis used by them for the state allocation.

[fol. 407] A. That is correct.

Q. I will show you what has been marked Exhibit No. 67, and will ask you whether or not that is what we have received from the railroads as being the basis that they used in this state allocation.

A. That is what it is.

Mr. Rampton: I of. Exhibit No. 67 in evidence.

Mr. Fitzpatrick: Objected to Mr. Examiner. It deals with matters foreign to the issues involved in this proceeding, and so far as I know, has no relation to it. There has been no distribution of copies to parties of record here, and I object to it as irrelevant and immaterial so far as the issues in this proceeding are concerned.

Mr. Rampton: I will make a statement on that. In the 30416 case a break down of costs was made by Dr. Parr, using the reports of the railroads, their allocation, as a basis just as Mr. Crandall has used it as a basis here today.

The railroads attacked the authenticity of Dr. Parr's breakdown, on the same bases that they have attacked it here—they said, sure, we furnish the figures that you said to furnish, but they aren't any good, and the Interstate Commerce Commission said to the railroads, we want you to tell us how you prepared these reports, how you made the breakdown.

Now that is just exactly the same question that this man asked Mr. Crandall on cross examination a few min-
[fol. 408] utes ago, and there is your answer in that book.

So far as not having copies for distribution is con-

cerned, the railroads themselves had about 3000 copies made up for distribution in the other case.

We can't have it reprinted for this case, but they are certainly not being taken by surprise, and they are certainly not being hurt because they have the same prints in the first place. That technical objection is certainly not to protect any substantial rights that they have.

Mr. Fitzpatrick: Mr. Examiner, in the first place the questions I directed to this witness were not in any way concerned with this so called exhibit identified as Exhibit No. 67.

The questions I directed to Mr. Crandall related only to Exhibits 64, 65 and 66, of record in this proceeding.

I am not acquainted with what is in this document, identified as Exhibit No. 67, and I am not acquainted with any and all of the reservations that may be therein contained. I am satisfied that so far as the issues we have here are concerned, that it doesn't pretain to them and it wouldn't be proper to receive it in this record unless there was a copy of the transcript which led up to it and dealt with it is also placed in this record in accordance with the rules of practice.

Exam. Witters: It deals with the formula used by the eleven western states, including Utah.

[fol. 409] Mr. Sohm: I submit that the commission can take official notice of the dealings back of it, and the reasons for its admission.

Mr. Miner: May I ask the witness a question?

Mr. Sohm: Let me make a statement on this offer.

By Mr. Miner:

Q. In connection with the objection, have you studied that proposed Exhibit No. 67?

A. I haven't studied it.

Q. You do not know what it contains then?

A. I know it contains the method of breakdown.

Q. But have you gone over it, thoroughly.

A. I haven't gone over the entire exhibit, page by page. I know what they are trying to get at, they are trying to get an allocation of intrastate expenses.

Q. You didn't go over that exhibit in preparing what you have testified here to, did you?

A. No.

Q. And it was not prepared as a reult of your study of that exhibit.

Mr. Sohm: We will admit that.

Mr. Miner: And it is entirely improper on any basis whatsoever as a part of cross examination of this witness, it was not used by him in preparation of what he testified to, and it is incompetent on any possible basis, unless they want to offer it on their own case, rather than cross examination.

[fol. 410] Exam. Witters: You would be willing to offer it as part of your case, wouldn't you?

Mr. Rampton: Surely. As I understand it, this gentleman is the state's case. The railroads consented in putting him on out of turn.

Examiner Witters: I hardly see that it adds anything to the formula, so far as Utah is concerned. It does contain the formula used by the other states, in the western territory, that is the eleven western states.

Mr. Sohm: It pertains to Utah too.

Mr. Miner: But this witness can't identify it, and knows nothing about it in order to identify it.

Mr. Fitzpatrick: Well, Mr. Examiner, so far as Utah is concerned, we have already admitted into the record the formula in Utah.

Exam. Witters: Yes.

Mr. Fitzpatrick: So, so far as Utah is concerned the exhibit identified as 67 would be surplusage.

Exam. Witters: Well, they may want to show what the formula is in the other eleven states.

Mr. Sohm: I want to support that offer, and it is certainly not irrelevant and immaterial, although it might have been before the questions of Counsel, directed specifically to this apportionment, but when he questioned the apportionment it became immediately a matter very pertinent to this case.

[fol. 411] Exam. Witters: Well, I will admit the exhibit.

Mr. Fitzpatrick: Our objections are reserved to it.

Exam. Witters: Exhibits Nos. 64, 65, and 66 are also received.

(Exhibits Nos. 64, 65, 66, and 67, witness Crandal received in evidence)

Mr. Sohm: I have a few questions on redirect. Do you have anything further, Mr. Rampton?

Mr. Rampton: No.

Redirect examination.

By Mr. Sohm:

Q. The figures you used on intrastate and interstate, I should say system statistics, referring to Exhibit No. 64, marked Revenues and Expenses, are copied figures are they not?

A. Yes, they are copied figures.

Q. Direct from the reports of the railroads to the Public Service Commission of Utah?

A. Yes.

Q. Are branch lines included in interstate, or system-wide figures, as you have them on Exhibit No. 64?

A. Yes.

Q. Are branch lines included in the system figures for mileage?

A. That is the total system.

Mr. Fitzpatrick: Now wait a minute—he gave me the answer that the branch lines were not included——

[fol. 412] The Witness: On the density they were not, but on the revenues and expenses that is the entire system.

Q. Well then the next question, in figuring your density the branch lines mileages were not figured in the system-wide statistics?

A. That is correct.

Q. They were not part of your figures at all in figuring density?

A. That is correct.

Q. So they were compared to figures intrastate that did not include branch lines.

A. Yes.

Q. That is the only proper way to make such a comparison.

Mr. Fitzpatrick: That is objected to. He is not qualified.

Exam. Witters: It is a leading question.

Mr. Sohm: Yes, it is leading.

Q. Can you make a comparison between figures intrastate, without the branch lines, and system-wide figures with the branch lines?

A. Well I think you could do that. Wait a minute these system statistics are mainline miles.

Mr. Fitzpatrick: A little while ago you said it included the branch lines, that is what you told me.

Mr. Sohm: I believe that is not true. He stated in answer to my question, because I had been talking about revenue and expenses, that the revenue and expenses included branch lines.

[fol. 418] The Witness: Revenue and expenses included the branch lines, but on the density, it is comparing the main line miles of track, within the state, to the main line miles in the entire system.

Q. Is that the general method of computing or at least by the Interstate Commerce Commission, etc., using the main line rather than all the little side tracks?

Mr. Fitzpatrick: I object to that unless the witness knows.

Q. I am asking do you know?

A. I do not know. I haven't seen enough of those statements to say yes or no. However, these are statistics that are most common, to the best of my knowledge.

Q. Do you know how many miles of narrow gauge track there is in Colorado?

A. I do not know.

Q. So far as you know, there are very few miles of such track.

A. I do not know.

Mr. Fitzpartick: Just a minute, may I have the question?

Exam. Witters: He said that he didn't know.

Q. With regard to Exhibit No. 66, there are many important packing houses of meat products in Kansas, Chicago, and other places are there not?

A. That is correct.

Q. And movement out of those places may be very short [fol. 414] movements interstate, may they not?

A. Yes.

Mr. Fitzpatrick: We don't have that comparison in these exhibits. I am objecting because he doesn't have that comparison.

Mr. Sohm: These questions are redirect in response to Cross Examination about products of animals moving 2000 miles interstate as compared with some other fantastic figure, intrastate. It is perfectly proper redirect.

Mr. Fitzpatrick: These questions I directed to him were questions on interstate traffic moving from Utah to interstate destinations as compared to that traffic moving intrastate in Utah.

Mr. Sohm: I will withdraw the question. That is all.

Exam. Witters: Any further questions?

Mr. Miner: I think I would like to ask a question or two on this one percent study.

Recross examination.

By Mr. Miner:

Q. At my request you have furnished me some of these pamphlets showing waybill studies, from which you took this information?

A. Yes.

Q. And on the first two pages there is a note of explanation on each one, is there not?

A. Yes.

[fol. 415] Q. I will just read parts: "in these cases separate waybills are issued——

Mr. Sohm: Is this a question of Counsel?

Mr. Miner: I am asking him if this isn't the case and he has one to refer to, yes.

Mr. Sohm: I don't see it.

Mr. Miner: In the third paragraph from the top, about the middle of the paragraph.

Q. (Continuing) "in these cases, separate waybills are issued for each rail movement, whereas only one origination and one termination are reported in the Freight Commodity Statistics." So this is different from what the usual Freight Commodity Statistics show. Isn't that true, because it says here "That separate waybills are issued for each rail movement", rather than, where it is transit, just the origin and destination. It so states, doesn't it?

A. That is correct.

Q. Then it goes on: "other variations occur in the case of rebilled traffic, where two or more way bills are issued for each shipment; company material moving on revenue bills which is not usually reported in the terminated revenue figures in the Freight Commodity Statistics." It so states, doesn't it?

A. That is correct.

Mr. Sohm: I object to the question. I have offered three or four times to have every bit of this read into the record [fol. 416] and I offer at this time to have it all copied into the record. Everybit of it may be copied into the record, if counsel so desires.

Mr. Miner: Let me finish my question.

Exam. Witters: They didn't agree to that.

Q. In the last paragraph there, it says: "some of the shipments may be outbound transit moves in which case only the balance of the through revenue is shown, or they may be shipments of 10,000 pounds or more which moved on 'less-car load' or 'any quantity' rates." It so states, doesn't it?

A. That is right.

Q. "In either case there was some distortion of the revenue averages, so that care must be taken in interpreting the indicated results." It so states, doesn't it?

A. Yes, I have no reservation on that.

Q. Then on the second page, the last paragraph: "The totals show for the group and for each of the commodity classes referred to above the number of car loads, the num-

ber of tons, revenue in dollars, short-line ton-miles, short-line car-miles," etc., it so states.

A. Yes.

Q. Do you know what "short-line ton-miles and short-line car-miles" means?

A. The shortest distance between two points, might not be the actual miles the train travels.

By Mr. Fitzpatrick:

Q. The shortest rail distance?

[fol. 417] A. It could be possible.

By Mr. Miner:

Q. "No data are shown for states originating traffic from less than three shippers," it so states, doesn't it, and it is underlined.

A. I don't have that in this one.

Q. The last paragraph there.

A. The last paragraph given in this one isn't included in the one I have here.

Q. Now these same studies show traffic, with destinations in Utah, do they not?

A. That is correct.

Q. Is there any particular reason why you chose traffic originiating in and moving out of Utah, rather than that with destinations——

A. I've answered that three times now, there wasn't any.

Q. But you could have gotten that just as well?

A. I could have gotten that just as well, that is right.

Mr. Miner: That is all.

By Mr. Rampton:

Q. There is no reason to believe, if you had got it, that it would have shown any different comparative figures than the ones you have?

A. In other words, it wasn't this, that I computed what it was originating outside of the state of Utah, and coming in, and then deliberatly left it out—I did not do that.

Q. You have had a uniformity of treatment on intrastate [fol. 418] and interstate throughout.

Mr. Miner: Are you testifying.

Mr. Rampton: I am cross examining, Mr. Miner.

A. Yes, there has been uniformity.

Mr. Rampton: That is all.

Mr. Sohm: Just a moment, I have a question on redirect.

By Mr. Sohm:

Q. Counsel has brought this out, you were in attendance weren't you, at the hearing before the Utah Public Service Commission, which were comparable to this case, requesting the Commission to give the Ex Parte 175 increase.

A. Yes.

Mr. Fitzpatrick: I am objecting to that, that doesn't pertain to anything that was brought out on cross examination, and it isn't proper redirect.

Mr. Sohm: I am leading up to something that is very, very pertinent.

Exam. Witters: If you have overlooked it, go ahead.

Q. At that hearing was there not introduced Exhibits No. 18 and 18 A, by Mr. Kroll of the Railroad, using way-bill statistics No. 5326, 5327, and 5328, exactly as you have used them?

A. Exactly the same.

Q. Did not those exhibits use exactly the same products and the same figures that you have used, generally?

A. They were taken directly from that.

Q. Were they not used for the purpose of proving exactly [fol. 419] the same thing that you have tried to prove?

A. I can see no difference in what the basis is.

Q. Did they have any reservations in their testimony, to the extent that these are not accurate figures, or proper figures to introduce before the Utah Public Service Commission?

A. Well they are put here as estimated intrastate revenue. We are not entering these exhibits as the exact amount. We know that there are certain reservations with a one percent sample, which has been brought out. We are not

trying to say it is perfect—no sample is perfect, let's put it that way.

Q. Well now the estimated——

Exam. Witters: I do not think we should go any further than saying that they used the same way-bill statistics. We can't go into the record in that case.

Mr. Sohm: No, but my argument in this case is——

Mr. Miner: I believe there will be time for argument later, why take up time for argument now.

Mr. Sohm: My purpose in questioning him is to show that for the products of agricultural we used the same figures as were used in the former exhibit by the railroads themselves. It is the same, exactly, way-bill study, and to repeat those way-bill studies is quite inconsistent.

Mr. Fitzpatrick: Those studies that Mr. Kroll made were strickly intrastate studies.

Mr. Kroll: Utah, intrastate, yes.

[fol. 420] Exam. Witters: Before we adjourn for luneh, I think we should take an inventory of what we have left.

(Discussion off the record)

Exam. Witters: At this time we will adjourn until 2 o'clock.

[fol. 421] Afternoon Session.

Exam. Witters: Come to order gentlemen. Call your next witness, Mr. Fitzpatrick.

Mr. Fitzpatrick: Call Mr. Bradford.

R. K. Bradford was sworn and testified as follows:

Direct examination.

By Mr. Fitzpatrick:

Q. Will you please state your name?

A. R. K. Bradford.

Q. And where do you reside? Also your occupation?

A. Salt Lake City, Utah, Vice-President of the Denver and Rio Grande Western Railroad Company.

Q. And how long have you held that position, Mr. Bradford?

A. Since April 1947.

Q. And how long have you been in the railroad operating end?

A. I was in the operating end of the railroad—of three different railroads, from 1913 to 1942, at which time I transferred over to the executive department.

Exam. Witters: Mr. Bradford's qualifications as an operating witness will be conceded.

Mr. Fitzpatrick. Okey, thank you.

Q. You are familiar with the issues in this proceeding, are you, Mr. Bradford?

A. Yes, sir.

Q. You are familiar with the handling of freight traffic [fol. 422] on the Denver & Rio Grande, how it is how it is loaded and how it is moved?

A. Yes, sir.

Q. Will you tell us if there is any difference in the method of handling intrastate traffic and interstate traffic in Utah?

A. No distinction whatever.

Q. Is it handled in the same trains?

A. Yes, sir.

Q. Is the intrastate and interstate traffic intermingled in the same trains?

A. Yes. Except to the extent that certain of our trains are classified in switching and in that instance we do not classify that intrastate or interstate, but we classify it as to destination, to that extent you might have some separation between intrastate and interstate traffic.

Q. But there would be generally intra and interstate traffic?

A. We do not differentiate in our traffic at all.

Q. And is it handled by the same crews?

A. Yes.

Q. How about the other help that are involved in the making or receiving of intra and interstate shipments?

A. The same agent, the same accounting department, the same traffic department, we don't make any distinction in any of our departments, except to the extent that we do

make certain reports to state commissions based on certain [fol. 423] formulas that attempt to make an allocation between certain states.

Q. Now how about less than carload shipments?

A. The same situation.

Q. They are frequently intermingled in the same car, the same work sheets?

A. Oh yes, most of our merchandise today is handled by truck however, rather than by train.

Q. For the purpose of transporting traffic by railroad do you know of any instance on the D. & R.G.W. in Utah, where intrastate traffic is segregated and put into one train just because it is intrastate traffic.

A. No.

Q. Now what you have said, is that limited entirely to the Rio Grande, or do you have general knowledge of the operation of the railroads in Utah?

A. Why I have general knowledge of all railroads, and it leads me to believe that none of them separate intrastate and interstate traffic simply because it is one of the other type of traffic.

Q. And how much of the D. & R.G.W. operation in Utah is in mountain territory?

Mr. Rampton: Is in what?

Mr. Fitzpatrick: Mountain territory.

A. Well——

Mr. Rampton: In territory of a mountainous nature or in the Mountain Pacific area, or what?

[fol. 424] Mr. Fitzpatrick: Where he has mountain rates to pay, etc.

A. Oh we have varying rates of pay on some of our branch lines, particularly our coal branches. Our rates of pay on the Rio Grande generally are higher than the rates of pay on the neighboring lines even in Utah, except the Utah Railroad, and our rates of pay are higher than the local prairie scale of rates, not only on our line out here but the Utah Railway and these other lines that are operating in this western country.

By Mr. Sohm:

Q. When you say rates of pay, paid to your help?
A. Yes.
Q. That is what you are referring to?
A. Yes.

By Mr. Fitzpatrick:

Q. Now does the D. & R.G.W. have branch lines in Utah?
A. Yes, sir.
Q. And do you know of any considerable portion of the intrastate movement in Utah originates on the branch lines of the D. & R.G.W.?
A. Intrastate?
Q. Intrastate, yes.
A. Yes. All of our coal for Geneva and our lime rock for Geneva originates on branch lines, and that of course takes its destination at Geneva which is the United States Steel Company, that is an intrastate movement.
Q. And do the branch lines also handle interstate traffic?
[fol. 425] A. Oh yes.
Q. Now I believe you said that the pay of some of the branch line employees is higher than the main line, is that right?
A. Yes, sir, on our road.
Q. The D. & R.G.W. handles considerable coal in Utah, doesn't it?
A. Yes, sir.
Q. Is that largely seasonal traffic, or what is it?
A. Well ordinarily our coal for our steel mines is all the year round traffic, the commercial coal, or the coal for the commercial mines is inclined to be seasonal.
Q. How does the number of cars handled by the coal crews in gathering cars from the mines in trainloads compare with the number of cars of ordinary freight handled in the train on the main line of the D. & R.G.W.?
A. Are you trying to get a comparison between our branch lines and our main line?
Q. Yes.
A. As to cars?
Q. Yes.

A. Well it is somewhat of a relative proposition. You take the Sunnyside branch where we originate the coal for the Kaiser people, and also where we receive from the Carbon County Railroad the coal that originated from Geneva, and we handle awfully big trains, very big trains. Those are you might say captive mines, although they are commercial mines on that same branch. If you move to our [fol. 426] Spring Canyon branch, which is a very difficult branch from an operating standpoint, because of the high grades, we are restricted to the size of train that we can handle there. We only handle 50 percent of the cars on the train on the Spring Canyon branch that we do on the Sunnyside branch. Up on the Kenworth branch where the big Independent mine is located the same situation exists.

The Sunnyside branch will average more cars per train for example from Sunnside down to Mounds, the main line point, than we can from Mounds on the main line into Helper. It is pretty difficult. But normally your main line movements are larger than your branch line movements.

Q. And how does the handling of the ore traffic on the D. & R.G.W. compare with the handling of ordinary freight for the D. & R.G.W.?

A. I don't know that I follow you. Do you mean as to volume or as to the methods of handling it?

Q. How do you handle it—do you have assigned crews on the main line?

A. Most of our branch line crews are assigned crews.

Q. I see.

A. Most of our ore originates on our branch lines. But that ore that we get from the Union Pacific and that is interstate, moves from Utah over into Colorado, we at times get to Provo.

Q. Now you spoke about some coal going to Kaiser, that [fol. 427] is to California is it?

A. Yes. Montana.

Q. Now by and large then does intrastate and interstate shipments in Utah move under substantially similar conditions and circumstances?

A. Yes, sir.

Q. Is there anything you want to add to what you have already said concerning that?

A. No, sir.

Mr. Fitzpatrick: He is submitted for cross examination.

Cross examination.

By Mr. Sohm:

Q. Most of your coal moves intrastate does it not?

A. Yes, I think that most of our coal is moving intrastate now.

Q. Could you give us the percentage?

Exam. Witters. Intrastate where?

Mr. Sohm: Intrastate in Utah, excuse me.

A. Could I give a percentage, about 60-40, I am just guessing now, I know that we have about 450,000 tons of coal, what is so-called commercial coal in Utah, and we have about a million and a half to a million and three-quarters for the steel company, we know what the State of Utah puts out, it puts out less than six million and we haul half of it, I think probably 60-40.

Q. You stated both intrastate and interstate used branch lines did you not?

[fol. 428] A. Oh yes.

Mr. Sohm: That is all.

Cross examination.

By Mr. Rampton:

Q. I suppose the fact that those high wage rates and the difficult operating conditions, and the fact that the D. & R.G. has the best rate of return on the system, is attributed to that is it not?

A. Yes, sir.

Mr. Rampton: That is all I have.

Exam. Witters: Your next witness.

Mr. Fitzpatrick: Thank you Mr. Bradford.

(Witness excused)

Mr. Sohm: I would like to correct a statement I made just before we closed the session. I stated that the materials

that we had introduced here were from Mr. Kroll's exhibit, and compiled exactly for the same purpose, which is incorrect. We used exactly the same commodities as Mr. Kroll.

Mr. Fitzpatrick: The respondents rest, Mr. Examiner.

Exam. Witters: Now Mr. Manley spoke to me about going on, is that agreeable?

Mr. Fitzpatrick: That is agreeable with me.

Exam. Witters: Very well. Mr. Manley you may proceed.

B. P. Manley Was sworn and testified as follows:

Direct examination.

[fol. 429] Mr. Manley: My name is B. P. Manley. My address is #709 Tribune Building, Salt Lake City, Utah. I am Executive Secretary of the Utah Coal Operators' Association.

The Utah Coal Operators' Association is a non-profit incorporated association representing the producers of coal in the State of Utah. The Association members produce more than 80 percent of the commercial coal produced in Utah.

I have been engaged as Executive Secretary for this Association for over twenty years. During that period of time I have had occasion to study carefully the movement of coal, and to observe the problems which affect the sale and use of coal, including railroad rates on the movement of coal.

This Association on behalf of its membership opposes the carriers' petition to increase intrastate rates within Utah on the movement of coal within that state as requested by the petitioners.

On June 11, 1951, the Interstate Commerce Commission held hearings in Ex Parte 175 at Salt Lake City, Utah, at which hearing I appeared and made testimony on behalf of the members of Utah Coal Operators' Association in opposition to the granting of rate increases sought in Ex Parte 175.

In Public Service Commission of Utah Case No. 3669, the

Utah Commission held hearings on October 29th and 30th, 1951, and later on carriers' Second Supplemental Petition on November 17th, 1953.

[fol. 430] In Case No. 3669 the Public Service Commission of Utah on December 14, 1953, issued its Order of Dismissal concluding that:

> "The evidence of applicants did not afford the Commission sufficient information upon which to make a determination as to whether or not intrastate operations of applicants produced revenue sufficient to provide a fair share of the overall requirements of applicants."

This Association, on behalf of its membership appeared at each of the hearings held by the Public Service Commission of Utah in Case No. 3669, in which the same rate increases were sought on intrastate coal traffic as were made effective on interstate coal traffic in Ex Parte 175. To these increases this Association was opposed.

It should be noted that in these proceedings no evidence was offered by the carriers to show a failure of the intrastate coal shipper to pay his full share of the transportation burden. Certainly until such is proven, no increases in this Docket 31484 should be authorized.

I have prepared an exhibit showing per ton increases resulting from the Public Service Commission of Utah's order of March 18, 1953, on Utah intrastate coal rates and the freight rates which became effective May 1, 1953, to certain representative Utah destinations.

By Mr. Fitzpatrick:

Q. Pardon me, Mr. Manley, but will you tell us what [fol. 431] exhibit you are referring to there?

Mr. Manley. May I have this marked for identification as Protestants' Exhibit No. 68.

Exam. Witters: It may be so marked.

(Protestants' Exhibit No. 68, Witness Manley, marked for identification)

Mr. Manley: Freight rates on coal from Castle Gate King Mine, Utah, district, to Utah destinations showing increases authorized by Public Service Commission of Utah, by order dated March 18, 1953, also showing increases applied for in this proceeding.

Mr. Fitzpatrick: At this point may I make an inquiry Mr. Examiner?

Exam. Witters: Yes.

Mr. Fitzpatrick: Mr. Manley it is pretty hard to follow you when you have finished may we have the copy you are reading from for cross examination?

Mr. Manley: Well I only have my one copy from notes here.

Mr. Fitzpatrick: Will you make it available to us for cross examination?

Mr. Manley: No, sir, it will not be available.

Mr. Miner: If the Examiner please, I think that if he can't let us have a copy for cross examination we will object to him reading from it, because it places us under a handicap.

By Mr. Sohm:

Q. Mr. Manley, are you reading a statement or are you [fol. 432] just looking at notes?

A. Notes, and I shall depart from it as I feel inclined to depart from it sir.

Q. It is not a prepared statement?

Mr. Miner: It is a prepared statement, yes, it is there before him.

Mr. Manley: May I proceed, Mr. Examiner?

Exam. Witters: Yes, you may proceed. The rules provide of course that when you are reading from your written statement that you must furnish copies.

Mr. Manley: To whom?

Exam. Witters: To opposing counsel.

Mr. Manley: I was not aware that that is a requirement.

Exam. Witters: Well it is.

Mr. Sohm: How many pages do you have?

Mr. Manley: Fifteen.

Mr. Sohm: I was going to say that we could have the girls copy some of this.

Exam. Witters: Well they will be satisfied if they can use it.

Mr. Fitzpatrick: Yes, if we can use it for cross examination we will be satisfied. We can use his copy.

Mr. Manley: I will give you my copy.

Mr. Fitzpatrick: That will be satisfactory.

Mr. Manley: Are we all set to go forward?

Exam. Witters: Yes, go right on.

[fol. 433] Mr. Manley: (Continuing) This exhibit No. 68 shows the coal rates that would result should the increases sought in Ex parte 175 application be authorized.

I believe the exhibit is self-explanatory, and it will not be necessary to expand from that.

Exam. Witters: Very well.

Mr. Manley: I have also prepared an exhibit showing as to coal a comparison of effective Utah intrastate coal rates, including the increases presently authorized by the Public Service Commission of Utah, with certain interstate rates, including all authorized increases, and certain intrastate rates in the Mountain Pacific states which also include the interstate increases as authorized by the respective State Commissions.

Exam. Witters: Is that the one marked No. 3 in the upper right hand corner?

Mr. Manley: No, sir, there is no mark on them so far as I know.

This statement shows comparison of the effective rates of Utah intrastate coal rates including increase authorized by Public Service Commission of Utah.

Exam. Witters: This may be marked Exhibit No. 69 for identification.

(Protestants' Exhibit No. 69, Witness Manley, marked for identification)

Mr. Manley: This shows the relationship, comparative [fol. 434] relationship, of coal moving interstate to certain destinations, and to intrastate destinations of similar type of mileage, and a resultant ton mile earnings on each of those.

This statement shows that generally speaking Utah intrastate rates are on the same level or higher than the other rates shown and reflect a better recognition of mileage gradation than do the other rates. This exhibit shows also that the respective ton mile earnings on Utah intrastate rates are generally higher than revenue resulting from interstate movement. The statement indicates that as compared with interstate rates Utah intrastate rates should be reduced rather than be increased. This statement is, we believe, typical of rates in this Western area and additional examples would merely be cumulative.

Exam. Witters: I presume the interstate rates include the 175 increases?

Mr. Manley: They do, sir. It is so stated at the last head of it.

It will be noted, for example, that Utah's intrastate rates from Castle Gate to Milford are greater than the interstate rates from Castle Gate, Utah, to Preston, Idaho, although the distance to Preston is greater.

I have also prepared an exhibit showing the percentages of coal freight rate increases authorized by the Interstate Commerce Commission in Ex Parte 162, 166, 168, 175, in relation to the rates in effect prior to these increases, from [fol. 435] the Castle Gate and Utah group to certain points in Idaho Oregon and Washington. It will be noted that this exhibit shows an average coal freight rate increase of approximately 30.08 percent.

Mr. Fitzpatrick: Will you tell me to which exhibit he is referring now?

Mr. Solum: Mr. Manley, that is this exhibit is it not, sir?

Mr. Manley: That is it, sir. I am sorry they were distributed wrongfully.

Exam. Witters: This may be marked as Exhibit No. 70 for identification.

(Protestants' Exhibit No. 70, Witness Manley, marked for identification)

This exhibit also shows the percentages of coal freight rate increases authorized by the Public Service Commission of Utah, since February 24, 1947, and the percentages of total increases which would result from the granting

of the carriers' petition in this proceeding as to coal shipments originating at the Castle Gate Utah group destined to certain intrastate points shown. It will also be noted from this exhibit that the increases which have been authorized by the Utah Public Service Commission average approximately 45.86 percent.

Exam. Witters: Is that figure on the exhibit?

Mr. Manley: Yes, sir. It is an average of Line 8, sir, a close average of Line 8.

[fol. 436] It will be further observed that if the increases requested by the petitioners in this proceeding should be granted, the percentage of increases applicable to Utah intrastate coal rates would be 63.53 percent, or more than double interstate rates by giving full effect to the increases under Ex Parte 162, 166, 168 and 175.

This distortion and discrimination against Utah intrastate purchasers and producers and parallel advantage and discrimination in favor of interstate purchasers arises from the fact that the orders in the Ex Parte 166, and Ex Parte 168, and in Ex Parte 175, provided percentage increases subject to each instance to a maximum amount limitation. These increases operated to their full percentage extent as to the lower rates but operated to a much lesser extent percentagewise as to the higher rates of longer hauls, because of said specified maximum limitation of increase in each of those orders.

It appears from this exhibit that the percentage of increase which already has been authorized by the Utah Commission on intrastate movement of coal in Utah represent increases substantially greater than the percentage of increase which are in effect as to interstate rates, and that the granting of this petition would make the percentages of increase on Utah intrastate coal shipments double the percentage of increase as to the interstate rates shown. The effect of the granting of this petition would be to in-

[fol. 437] stitute and not to remove discrimination. The presently effective Utah intrastate return per ton mile on the movement of coal is equal to or higher than the present interstate per too mile return on the movement of coal. Coal purchasers in other localities are at no disadvantage by reason of the present Utah intrastate rates. Neither are coal producers in other localities.

I have also prepared an exhibit showing the comparison of present Utah intrastate coal rates from Castle Gate, Utah, group, with interstate rates from the Rock Springs-Kemmerer, Wyoming, groups to Utah destinations shown.

Exam. Witters: That will be marked No. 71 for identification.

(Protestants' Exhibit No. 71, Witness Manley, marked for identification)

Mr. Manley: There is, as closely as we can ascertain, approximately 100,000 tons of coal per year moving from these Wyoming origins to the Utah destinations.

This exhibit shows the rates both in dollar amounts and in rates per ton mile from Castle Gate, Utah, to Devil Slide, Utah, Ogden, Utah, and Bushnell, Utah, compared with the rates from the Kemmerer-Rock Springs Districts to these points. It will be noted that even under the presently prevailing Utah rates, Utah mines are at a freight rate disadvantage of $1.29 per ton in shipments to Devil Slide, Utah, as compared with the Kemmerer-Rock Springs Districts. If the increases requested in this proceeding were granted, the disadvantage of Utah mines would be in-
[fol. 438] creased to $1.65 per ton, notwithstanding the fact that the difference in distance between Castle Gate and Devil Slide, as compared with Rock Springs and Devil Slide, is only twenty-four miles.

This exhibit shows the comparison of the per ton mile rates on slack coal moving from the Castle Gate District to Devil Slide, Ogden, and Bushnell, as compared with the rates of the Kemmerer-Rock Springs Districts.

I call your attention to the rate—the ton mile earnings
.016167
on the Castle Gate to Devil Slide as being .018127, whereas the earnings for the Rock Springs to Devil Slide is .010566. That is worthy of comparative attention, gentlemen.

It will be noted in this exhibit that the freight rate from Rock Springs to Bushnell is shown to be $2.59 per ton, whereas if the Ex Parte 175 increase were included on this interstate shipment, the rate should rightfully be $2.90 per ton. However, the $2.59 per ton rate was brought about by the application of Union Pacific Section 22 Quotation No. 31, dated June 6, 1952, and amended March 30, 1953, the

amendment stating that the $2.59 rate on slack coal from Rock Springs-Kemmerer, Wyoming, would be in effect on and after May 1, 1953.

That was the date that the Public Service Commission authorized the increase in rates intrastate rates, in accordance with the 30961 determination of the Interstate Commerce Commission.

It cannot be said that under the presently prevailing [fol. 439] rates from Wyoming to Utah points as compared with rates from Utah mines to Utah points, Utah producers have any unreasonable advantage or preference or that Wyoming producers suffer undue or unjust discrimination. Any advantage under the present rates rests with Wyoming producers and any disadvantage is one which rests with the Utah producers and which would be greatly magnified by the granting of the carriers' petition in this matter.

Mr. Fitzpatrick: Mr. Examiner, I am handicapped in not having seen this statement, and the witness is drawing a number of conclusions that have no foundation in fact. I would like to note a running objection to this testimony here, he is attempting to state legal conclusions and it is impossible to stop and object each time, I would like to have a running objection to all of this testimony, first, for the reason that we weren't furnished with a copy of the statement, and we can't object to it before it is read.

Exam. Witters: He is stating what the exhibits show, proceed.

Mr. Fitzpatrick: All right.

Mr. Manley: I am not drawing any legal conclusions, I am not a lawyer, thank God, and I am not trying to be. I was stopped from having my counsel here, Mr. Examiner, by reason that we appealed to the Commission to defer this examination until I could have the benefit of counsel here. Of course he was called away, but that was denied. I am doing the best I can in his absence to put this case before this Commission.

[fol. 440] Exam. Witters: All right, proceed.

Mr. Manley: We repeat the granting of this petition would be to create and not to eliminate discrimination.

No discrimination against consumers or shippers in other localities can be found to justify the granting of this peti-

tion. The return to the railroads on Utah intrastate coal shipments without the granting of this petition is comparable to the return to the railroads on interstate shipments where all Ex Parte increases, including Ex Parte 175, are in effect. The granting of this petition, however, will bring serious consequences to Utah coal producers and to consumers of coal in Utah.

This is a revenue case, Mr. Examiner, purely and simply a revenue case. The railroads have not availed themselves in obtaining the total revenue resulting from the order of the Public Service Commission of Utah, dated March 18, 1953.

For example, prior to the 13th Section rate case increase the rates per ton from Columbia only to Geneva and Ironton on seven inch crushed coking coal was $1.75 per ton. The increase by order of the Public Service Commission of Utah effective May 1, 1953, by .32 cents per ton. That rate then became, including the increase, $2.07 per ton.

However, in D. & R.G.W. Tariff No. 5904-J issued August 3, 1953, effective September 15, 1953, Item 350 reads:

> "Coal, crushed coking, seven inch size and under. From Columbia only—to Ironton only—Utah, and to [fol. 441] Geneva only—Utah, rate of $1.90 per ton."

Mr. Fitzpatrick: Now does that appear in any of your exhibits here, Mr. Manley?

Mr. Manley: No, sir. I am telling about it.

The above rate results in a rate 17 cents per ton lower than the rate resulting from the increase of 32 cents per ton authorized in th 13th Section case. Ex Parte 162, 166 and 168, along with Ex Parte 175, were instituted for the purpose of securing additional revenue to the railroads, and thus this application of but 15 cents per ton of the allowable 32 cents per ton falls short of supplying its proportion of revenue to the carriers.

And that is what they are after, Mr. Examiner, was revenue, so they said.

There is involved here a large movement of coal to the destinations which exceeds 1,500,000 tons annually. 1,500,000 tons at 32 cents per ton represents revenue to railroad of $480,000.00 annually.

1,500,000 tons at 15 cents per ton represents revenue to railroad of $225,000.00.

The difference beteen the rate of $2.04 as permitted by the Utah Commission's order, and the rate of $1.90 as published by the railroad tariff results in a lowering of revenue to railroad of $255,000.00 annually. This loss of revenue we feel must be recaptured from other shippers.

Evidently any rate increase that may hereafter be au- [fol. 442] thorized will be computed on the now published rate of $1.90 per ton from Columbia to Ironton and Geneva, rather than upon the rate reflecting the 32 cents per ton increase authorized by the Utah Public Service Commission which was $2.07, as hereinabove set out, and will result in further loss of revenue to the carriers for the reason that

12 percent of $2.07 is 25 cents increase per ton, but

12 percent of $1.90 is 23 cents increase per ton.

This, computed upon approximate annual shipments of 1,500,000 tons to Geneva and Ironton, represents further revenue loss of $30,000.00 annually. This in addition to the revenue loss shown above of $255,000.00 because the rate was increased by only 15 cents per ton, whereas it was authorized to be increased 32 cents per ton.

However, if the carriers follow the precedent heretofore established by them, rate changes undoubtedly will be based on something less than the increases sought therein.

We have no complaint against lowered freight rates to points mentioned here or to any other Utah destination. We are concerned however, we are concerned that all shipments should receive equal rate treatment. If for instance 15 cents was to be the increase rather than the 32 cents authorized, then the 15 cents increase should be made applicable to all coal shippers alike, and not to a few coal shippers.

On Sheet 35 of the decision of the Interstate Commerce [fol. 443] Commission in 30961, the following appears:

> "Because of the refusal of the Utah Commission to permit the increases sought in rates on coking coal intrastate to steel mill points in Utah, the respondent found it necessary to reduce their interstate rates below those authorized by us from the same Utah origin to a competing steel mill at Fontana (Kaiser), Cali-

fornia, This reduction, made to eliminate undue preference of Utah mills and undue prejudice to California mills, had, to the date of the hearing, deprived the carriers of more than $80,000.00 in annual revenue."

The Interstate Commerce Commission thus stated that the refusal of the Utah Commission to increase rates on coking coal moving intrastate in Utah was causing loss of interstate revenue as well as intrastate revenue. The Interstate Commerce Commission ordered the Utah Commission to allow the increases on intrastate rates. After the Utah Commission followed the mandate and allowed the increases the railroads voluntarily published rates to areas above named, 17 cents below the authorized rate and thereby in part reestablished the condition which the Interstate Commerce Commission decried.

Mr. Fitzpatrick: Now this material that he is referring to here is certainly not on his exhibits, and there is no way that I can anticipate it. I would like to have a running objection to these conclusions—I have no opportunity to [fol. 444] make an objection before the statements are made.

Mr. Manley: I am doing no more than has been done heretofore in this proceeding, the quotations from the decisions of the Interstate Commerce Commission——

Exam. Witters: That has been done several times in this hearing.

Mr. Manley: Well——

Mr. Fitzpatrick: I am not referring to the quotations from the ICC——.

Mr. Manley: Why can't he listen like anybody else does.

Mr. Fitzpatrick: I am referring to these later statements of the rates, reductions, etc., that are not shown in the exhibits, or anything of that kind, I can't——

Mr. Manley: You can't what?

Mr. Fitzpatrick: I can't——

Exam. Witters: He can look at this man's statement for the purpose of questioning him.

Mr. Manley: I suppose you would like to have me shut up altogether.

Mr. Fitzpatrick: No, not at all.

Mr. Manley: Well the keep quiet until I get through, and then have at it.

In the Examiner's report in Docket No. 30961, Utah Intrastate freight Rates and Charges (13th Section Case) on Sheet 27, Paragraphs 6 and 7, the Examiner stated:

[fol. 445] "6. That the maintenance of intrastate rates and charges within Utah on bases lower than those herein recommended causes, and in the future will cause, unjust discrimination against interstate commerce, undue preference of and advantage to certain persons and localities in intrastate commerce, and undue prejudice and disadvantage to certain persons and localities in interstate commerce. (That is my own underscoring.)

"7. That this unjust discrimination and undue preference and prejudice should be removed by establishing intrastate rates and charges between points in Utah which will reflect the same increases as are, and for the future may be, maintained by respondents on like interstate traffic to and from points in Utah under the Commission's authorization in Ex Parte Nos. 162, 166 and 168."

I bring this to your attention, sir, because those bases have been abandoned apparently voluntarily by the railroads in the cases which I have mentioned.

In the report of the Interstate Commerce Commission in Docket No. 30961, decided December 1, 1952, the Commission—the Interstate Commerce Commission itself—stated that on Sheets 49 and 50, in evident approval of what the Examiner had stated:

[fol. 446] "4. The present Utah intrastate rates and charges on freight traffic in Utah, imposed by authority of the State, are abnormally low, and traffic thereunder fails to produce its fair share of the earnings required to yield revenue sufficient to enable the respondents, under honest, economical, and efficient management to provide adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service, and thereby accomplish the pur-

pose of the Interstate Commerce Act, as set forth in the national transportation policy declared by the Congress, to develop and preserve a national transportation system adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense; the burden thus case upon interstate commerce is undue and to the extent that these intrastate rates and charges are less than they would be on the bases herein approved; and these intrastate rates and charges cause, and for the future will cause, undue, unreasonable, and unjust discrimination against interstate commerce."

Mr. Examiner, these people were here, that 30961, the same group were here, asserting that they needed this revenue for the intrastate movement of coal in Utah, and they failed to take it, the railroad forewent a substantial amount of that revenue.

[fol. 447] Mr. Fitzpatrick: Now I object to that last statement and ask that it be stricken, there is no evidence here showing that was the fact.

Mr. Manley: Mr. Examiner, the tariff speaks for that, and I gave them tariff quotations for it, those are listed in the tariff, the published rate from these terms I have mentioned in the Tariff 5904 of the Denver & Rio Grande is listed from there $1.90——

Exam. Witters: Now just a moment, the objection is overruled. We don't want a great deal of argument here. We would rather have it in briefs.

Mr. Manley: I am not making any argument. I am reading my story, if this fellow will let me alone. May I proceed?

Exam. Witters: You may.

Mr. Manley: Further quoting from the Interstate Commerce Commission:

"5. The Utah intrastate rates on sugar beets, beet pulp, molasses, lime rock, cement, coal, coke, ores and concentrates, and sand and gravel, cause undue and unreasonable advantage and preference of intrastate shippers and undue and unreasonable prejudice and disadvantage to interstate shippers.

"6. The undue, and unreasonable, and unjust discrimination and the undue and unreasonable advantage, preference, and prejudice herein found to exist [fol. 448] should be removed by applying to the Utah intrastate rates and charges on the commodities and traffic herein described, the same respective increases as are and for the future may be maintained by the respondent on like interstate traffic between points in Utah and adjoining states under ou authorization in Ex Parte Nos. 162, 166, and 168."

The railroads have seen fit in several instance by manipulation to make rate changes in interstate rates on coal from Colorado origins to Utah destinations, resulting in the elimination of increases authorized by Ex Parte 175. To some of them I now refer.

I have prepared an exhibit showing the effect of coal rate changes and reductions made by the railroads from Palisade, Colorado, to Utah destinations.

May this be marked as Exhibit No. 72 for identification.

Exam. Witters: It may be so marked Exhibit No. 72 for identification.

(Protestants' Exhibit No. 72, Witness Manley, marked for identification)

Mr. Manley: This exhibit shows the effect of the coal rate changes and reductions made by the railroads from Palisade, Colorado, to Utah destinations resulting in no rate increases as authorized by Ex Parte 175, and of course the loss in revenue sought by applicants in that proceeding.

[fol. 449] Prior to May 20, 1953, the rate on slack coal from Palisade, Colorado, district, to Utah destinations, Ironton, Provo Pressed Brick Works, Geneva, Index Nos. 420-440, 468, in the Denver & Rio Grande Tariff No. 5904-I, including all increases in Ex Parte 162 through Ex Parte 175, was $3.33 per ton.

Denver & Rio Grande Tariff No. 5904-I, Supplement No. 51, effective May 20, 1953, published reduced rates on slack coal from Palisade, Colorado District to the Utah destinations shown above, of $2.65 per ton, subject to Ex Parte

175 increases, which made the rate now in effect $2.97 per ton.

This $2.97 is exactly the rate that was in effect September 1, 1949, resulting from increases authorized in Ex Parte 162, 166 and 168. Therefore, this reduction to $2.65 per ton, subject to Ex Pate 175 increase, was designed to and did nullify any Ex Parte 175 increases on this $2.97 rate, which was in effect resulting from increases authorized in Ex Parte 162, 166 and 168.

The net result of the foregoing activities is that the rate From Palisade, Colorado District to Utah points shown above is reduced by 36 cents per ton.

Reference is made to rate changes and reductions from Bowie, Colorado, and on which I have prepared an exhibit, from Bowie, Colorado, to certain Utah destinations, concerning which I have prepared this exhibit showing in what manner the railroads have changed the rates so that [fol. 450] rate increases authorized in Ex Parte 175 were emasculated.

Exam. Witters: This may be marked as Exhibit No. 73 for identification.

(Protestants' Exhibit No. 73, Witness Manley, marked for identification)

Mr. Manley: Prior to May 20, 1953, the rate on slack coal from B Bowie, Colorado District to Utah destinations, Ironton; Provo pressed Brick Works, Geneva, Index Mos. 420-440, 468, in Denver & Rio Grande Western Tariff No. 5904-I, including all increases in Ex Parte 162 through Ex Parte 175, were $3.68 per ton.

Rio Grande Tariff No. 5904-I, Supplement 51, effective May 20, 1953, published reduced rates on slack coal from Bowie, Colorado District to Utah destinations shown on exhibit, of $2.90 per ton, subject to Ex Parte 175, which made the rate now in effect $3.25 per ton.

This present rate of $3.25 on slack coal from Bowie is four cents per ton less than the rate of $3.29 in effect September 1, 1949, as the result of increases authorized in Ex Parte 162, 166, 168, so that not only has the Ex Parte 175 increase been nullified, but the rate has been further reduced by four cents per ton more.

The net result of the foregoing activities is that the rate from Bowie, Colorado District to Utah points shown above is reduced by 43 cents per ton.

The Union Pacific Railroad Company, which is a party to [fol. 451] this proceeding has freely used Section 22 rates to reduce normal rates on coal from Wyoming to Utah points, in order to increase the movement of Wyoming coal from Wyoming to Utah destinations for Government use. By thus decreasing the movement of Utah coal the railroads have reduced the aggregate revenue from the movement of Utah coal, and they now seek to increase Utah intrastate rates to produce increased revenue from the movement of Utah coal.

The basis of this proceeding is asserted to be need for revenue. Why should the railroads be permitted to impose upon other coal movement revenue losses resulting from special rate concessions.

During the year 1948 there was shipped by rail by members of the Utah Coal Operators' Association to Utah destinations 1,349,297 tons, and there was sold by them to truckers at their mines, 168,742 tons.

During the year 1948 there was shipped from non-rail served mines in the Counties of Carbon, Emery, Sevier and Summitt in Utah, 387,000 tons.

During the year 1953 there was shipped by rail by members of the Utah Coal Operators' Association to Utah destinations 640,390 tons, and sold by them to truckers at the mine 78,000 tons.

The reduction, Mr. Chairman—Mr. Examiner—between the year 1948, shipped by rail to Utah destinations from [fol. 452] 1,349,000 to 640,390 tons.

During the year 1953 there was shipped from non-rail served mines from the Counties of Carbon, Emery, Sevier and Summitt, 755,126 tons.

With regard to the coal tonnage shipped from non-rail served mines, information as to the quantity that moved to Utah destinations is not available.

Increased freight rates mean increased movement by truck.

In the year 1953 there was sold in Utah 39,476,944 MCF of gas, which is equivalent to the use of 1,380,313 tons of Utah coal.

Large additional quantities of natural gas have been developed in Utah and the Public Service Commission of Utah has issued authority to distribute an additional 120 million cubic feet per day for consumption in Utah. This additional 120 million cubic feet of natural gas per day provides double the quantity of gas that was heretofore available in Utah. This additional quantity of gas is equivalent to the use of 4,195 tons of Utah coal per day, and equivalent to the use of 1,531,467 tons of Utah coal annually.

With this additional gas sales would represent a total equivalent of 2,911,780 tons of Utah coal annually.

The additional 120 million cubic feet of natural gas authorized to be distributed daily in Utah by the Utah Public Service Commission will be sold principally to industrial [fol. 453] users.

Notwithstanding the fact that information as to gas supply that was available and would become available in Utah, was supplied at the hearing in the 13th Section Case, Docket 30961, February 25, 1952, the Interstate Commerce Commission in its decision made the following statement (sheet 35 of that decision):

> "In 1950 the coal production in Utah was 5,498,838 tons, of which 2,894,913 tons moved interstate and 2,603,925 tons intrastate. Of the latter 2,015,222 tons were for industrial purposes, such as steel mills, power plants and sugar factories. The respondents concede that with increases in rates there may be some diversion to trucks of coal for domestic use."

And the the Commission goes on to say, I suppose stimulated by the railroads,

> "There is no indicated probability of a diversion of industrial coal, which constitutes the preponderance of the intrastate movement."

It should be pointed out to this Commission now what has happened in the displacement of Utah's industrial coal by natural gas sold to industrial consumers in the State of Utah since the year 1950.

In the face of many industrial users who have changed and are contemplating changes from coal to natural gas, the figures shown, which I will now give you, we believe [fol. 454] are evidence of the fallacy of such reasoning as expressed by the Commission in its decision as set out above. There is shown below the total quantity of industrial gas sold in Utah and the coal equivalent during each year from 1950 to 1953, inclusive:

Mr. Miner: Now just a minute——

Mr. Manley: If you will just be quiet a minute——

Mr. Miner: I am going to object.

Mr. Manley: Well object and be damned, keep quiet——

Mr. Miner: Well now.

Mr. Manley: Just let me finish my job, that is all you do is sit there and yack-yack——

Mr. Miner: Now let me object, Mr. Manley. I think that all he is doing is filling the record with this natural gas matter, and I think it is not pertinent in any manner whatsoever.

Mr. Manley: That is what you think.

Mr. Miner: I object to it.

Mr. Manley: Well I don't.

Exam. Witters: The objection is overruled.

Mr. Manley: There is shown here that the total quantity of industrial gas sold in Utah and the coal equivalents during each year from 1950 to 1953, inclusive:

In 1950 there was 18,885,542 MCF of gas sold and it was the equivalent of 660,334 tons.

In 1951 there was 20,133,923 MCF with coal equivalents of [fol. 455] 703,983.

In 1952, 21,242,641 MCF and equivalent to 742,749.

In 1953 there was 24,153,931 MCF the equivalent of 844,543.

Now that relates, Mr. Examiner, entirely to industrial gas and to industrial coal, not any other kind. Do you want me to go on?

Exam. Witters: Go right ahead.

Mr. Manley: Thank you very much.

In this matter of users contemplating conversion from coal to natural gas, the cost of transportation of coal not only can but inevitably must and will largely influence decision.

The increase in freight rates will accentuate the use of natural gas and reduction in the use of coal.

The sale of additional gas can mean nothing else but the sale of less coal, Fuel demand increase has not kept pace with the increased use of gas. Gas is taking the market because of relative costs. Transportation costs are as much a part of the fuel costs as mine costs and the increase of coal costs means that less coal will be used and that means that less coal will be transported. As the railroads lose volume, they lose revenue. Coal rates have already reached a point where the law of diminishing returns is in operation.

Coal production costs today in Utah are as low as mechanization can make them. Under coal prices which [fol. 456] prevail today for Utah coal, Utah operators are operating without profit. Mine prices cannot be reduced further. Transportation charges must be fixed, if properly fixed, in relation to what the traffic will bear. The traffic will not bear coal freight rate increases.

It now being apparent that the production and consumption of Utah coal is declining, and we urge the Commission to recognize and take note of the continued decline in coal production and consumption, which proves that coal traffic cannot bear the high level of coal freight rates sought in this application.

That is all I have.

Exam. Witters: Do you wish to offer the exhibits now? Nos. 68 through 73?

Mr. Manley: I offer them in evidence, please.

Mr. Fitzpatrick: May the offer be reserved until after cross examination.

Exam. Witters: Very well.

Mr. Fitzpatrick: Now, Mr. Examiner, in order to properly safe-guard the record, this statement having been read without an opportunity to anticipate anything, and my having been refused a running objections to it, I hereby object to those portions of the statement wherein they relate to matters that are not shown in the exhibits, I am not objecting to those portions of the statement where he re- [fol. 457] ferred to decisions of the Commission, or where he is quoting from decisions of the Commission, or Ex-

aminer's reports, I am objecting to a number of conclusions in the statement, on the ground that it is impossible to anticipate them and object, and I ask that those portions be stricken.

Exam. Witters: The objection is overruled.

Do you wish to look at this written statement now for the purposes of cross examination?

Mr. Fitzpatrick: Yes. I am going to ask Mr. Earley to proceed here, then I would like to ask a few questions after he has finished.

Cross examination.

By Mr. Earley:

Q. Mr. Manley, will you refer to your Exhibit No. 71.

A. Yes, sir.

Q. On Line 2, Rock Springs to Devil Slide, you see those words?

A. Yes, sir.

Q. Rock Springs is on the Union Pacific, isn't it?

A. Yes.

Q. So is Devil Slide?

A. Right.

Q. It is a local movement on the Union Pacific?

A. Well it is an intrastate movement.

Q. It is one line only involved?

A. That is right.

[fol. 458] Q. Castle Gate is not on the Union Pacific is it?

A. No, sir.

Q. Do you know, Mr. Manley, what the rate is from Rock Springs to Salt Lake City?

A. Tom, I don't remember.

Q. Do you know what the rate is from Castle Gate to Salt Lake City?

A. Yes, too well, slack coal——

Q. Both sizes.

A. Well I will have to look it up. $2.81 for other than slack, and $2.33 for slack coal, practically.

Q. Do you happen to recall what the rate is from Rock Springs to Salt Lake? I think I asked you that.

A. No, I don't remember, Tom, what they are.

Q. Do you agree that it is higher than the rate from Castle Gate?

A. Yes. I believe the provision is 25 cents higher than the established rate to Salt Lake City.

Q. Thank you. Now during your testimony you made it clear that the rate on coking coal from Columbia to Geneva was 17 cents less than what, to use your words, it should be——

A. Seventeen cents less than authorized by the—in the 13th Section Case and by the Public Service Commission.

Q. Yes. Do you represent all of the coal mines in Utah?

A. I represent the members of the Association.

[fol. 459] Q. Producers at Sunnyside and Columbia, don't belong to your association?

A. No, sir.

Q. Do you think the railroads should increase that rate to $2.07?

A. No, I said in my statement that I was not objecting to any increase in rates; but if 15 cents was what the rate should be increased, it should be increased to everyone alike, not to a specialized few.

Q. Do you want to answer my question?

A. I am answering it.

Q. Do you think we should increase them? That isn't an answer.

A. If you put on the 15 cents at the head, you will reduce ours to it, that is what. I am against an increase in rates anywhere.

Q. That isn't an answer to my question. Do you think that we should restore the $2.07 rate?

A. I have nothing to say about that. I merely point that out because you made an unfair gain by putting—giving them an advantage and the rest of us a disadvantage.

Q. Do you know that we have since made that rate apply on commercial slack coal from the mines of your operators as well?

A. Yes, I understand that. There is very little coal moved in that area, and the coal—the principal user of coal there is the power and light plant at Hale, which is now connected with gas.

[fol. 460] Q. On the Heber Branch of our line?

A. That is at Hale, wherever it is, is it a station is it not?

Q. It is not intermediate to Geneva, we didn't have to do it to comply with the law did we?

A. I am not talking about that at all. I am merely stating that the fact that the only coal that we shipped down to that country recently is to the Hale plant, and which is now connected with the gas line.

Q. That is a substantial movement isn't it?

A. What?

Q. That is a substantial movement, isn't it?

A. Yes, that could be a substantial movement.

Q. And your mines, were the beneficiaries of the rates to Hale, that was reduced because of the coking coal to Geneva?

A. Well the fellow who paid the rate was the beneficiary.

Q. You didn't?

A. No, we didn't benefit, except that our market was benefited by the higher rate.

Q. Do your mines compete with any other mines in the West?

A. What do you mean?

Q. What I said.

A. What part of the West, the West is big.

Q. Producers. Let me be specific. Do your Association mines compete with Wyoming mines?

[fol. 461] A. Yes, certainly.

Q. And then you know what competition is?

A. Yes, I know what competition is.

Q. Then possibly you might appreciate that the producer of steel at Geneva has competition?

A. I know nothing about steel production and steels costs, or anything else.

Mr. Sohm: I object to——

A. There is nothing I have to say about steel, and I can't go with you on that, Tom,, I don't know anything about it.

Q. Well you wouldn't know then that there was control other than a whim of the carriers that caused a reduction of 17 cents a ton in the rates on coking coal from Carbon County mines to Geneva?

A. How would I know? It was announced and put in the tariff, that is all I know. What the reason was God only knows.

Q. I see.

A. I suppose you wanted to favor somebody, you didn't do us any favor.

Q. Mr. Manley you have just mentioned, and you said you did compete with Wyoming mines. Some of this competition you meet in marketing your coal in the Northwest, do you not?

A. Yes, of course.

Q. And to that territory by reason of prior orders of this Commission there is a 40 cent differential, Utah over [fol. 462] Wyoming, to points like, let me say, beyond McCammon?

A. No, that isn't true.

Q. What is it?

A. Thirty cents.

Q. Thirty cents. Okey, I stand corrected. But there is a differential?

A. In favor of Wyoming coal. In other words, Utah rates are 30 cents higher than any coal from Utah points north and west of McCammon.

Q. Thank you for correcting me. But the differential we agree now is 30 cents?

A. That is right.

Q. Now in connection with one of your exhibits, I think it was No. 70, will you refer to it please?

A. Yes, sir.

Q. And if the testimony is handy, rather than have me going through this written statement that you have, you stated that the average shown on Line 3 was thirty something——

A. Thirty and eight-tenths, I think it was Tom. 30.08 I believe, I will check it for you in a minute.

Q. 30.08. I will take that.

A. All right.

Q. And average of the averages, as I have it, on Line 8, I thought I had it but I haven't, will you supply that for me?

A. Yes.

[fol. 463] Q. Line 9.

A. 45.86 percent, Tom.

Q. I think that is enough for the benefit of the question I was asking. In the testimony that you submitted in connection with Exhibit No. 70, you stated that the imposition of Ex Parte 175 increases, on Utah intrastate traffic, either created, let us say, greater hazard in your costs by the higher percentage of increase total, and resulted in the same increases that applied to interstate traffic by reason of the maximum hold-down of 40 cents, I imagine——,

A. That is right maximum hold down, that is right.

Q. (Continuing) The horizontal increases on interstate traffic were estopped by the 40 cents maximum.

A. I said—that is right, a specified maximum limitation for increases.

Q. Is it of your opinion that it would be advisable for the Commission to take those maximum hold downs off the Ex Parte 175 increases?

A. No, I don't, but that percentage operates at disadvantage to lower producers.

Q. In other words, you like it when it helps you and you dislike it when it hurts you?

A. I don't like it at all, Tom, we don't like any part of it, the X-175.

Q. I just asked you if you liked the 40 cents and you stated——

[fol. 464] A. I didn't say that, I didn't say I liked it. You are very much mistaken.

Q. You said that you recommended that it be revoked.

A. I didn't say that, you said that.

Q. I asked that question, and you said no, no, or something like that.

A. Now ask your question again, and see if I can understand you.

Q. Do you think the Commission should remove the 40 cent per ton limitation on its Ex Parte 175 maximum increase?

A. You know I didn't have nothing to do in making the rates, and I wouldn't have put them in at all if I had had anything to do with it.

Mr. Miner: Now I want to ask him a question.

Mr. Manley: Now where did you get into it. I want to talk to just one at a time.

Q. I think you have answered this well enough. Mr. Manley, you did refer in your testimony to the rate on coking coal from the Carbon County mines to Geneva, and to other rates in D & R. G. W. Tariff No. 5904 series, do you recall?

A. Yes, from Bowie and Palisade?

Q. Yes, I will get to that specifically, but answer my question in connection with——

A. Well what is your question?

Q. Exhibit 72, but I just wanted to ask if you recall that [fol. 465] you mentioned various rates in our Tariff 5904 series, and also in your testimony you pointed out that there is a disparity in your mind as to the level of the interstate rates versus the intrastate rates. Is it your opinion that rates on coal should be made on a strict mileage basis?

A. Tom, I don't know how they establish rates, I just don't know how they establish rates.

Q. No, I asked you if you thought they should?

A. Well at least the mileage to some extent would have an influence on it, but I notice they are grouped in the various areas.

Q. I understand as well as you do about the grouping of rates. That wasn't the point I am trying to bring out. Do you think either specifically or an averaging rates by the grouping method; do you think in this country that coal rates should be made with a greater weight given to distance considerations than are——

A. Not altogether no, but now here, let me answer your question. These rates have been established—the rates that I am familiar with in the West have been established over a long period of time, and the differentials have been established between various districts, and we are concerned about the preservation of that relationship and those differentials. Now you have departed from that, and when you get away then you get into difficulty, I know nothing about rate making, and I question whether [fol. 466] there are a lot of railroad men that don't know a lot about it either.

Q. Well I am one of those.

A. Good for you.

Q. You have just said that you believe in differentials, we ought to maintain that——

A. Differentials as established, sometimes they have been established by this Commission.

Q. I see.

A. And then we expect those to be preserved.

Q. Including the dollar differential Summerset and Carbondale over Castle Gate?

A. Well that was established, that was a differential.

Q. And you think that is all right?

A. Oh yes, why not, since it is an established differential.

Q. Will you turn first to your Exhibits Nos. 72 and 73. First, with respect to Exhibit No. 72. You show as the origin group, Palisade, Colorado, have you located that?

A. That is all right, yes.

Q. Do you know of any movement of coking coal from the Palisade group to Utah?

A. I don't know, do you?

Q. I am not on the stand right at the minute.

A. Well you publish a rate there for it, and this not coking coal, I am not referring to coking coal, in this instance.

[fol. 467] Q. What is it?

A. Where do you get coking coal on there?

Q. Slack coal.

A. Slack coal is not coking coal as you define it. You said you give coking coal special treatment in your tariffs, this is not coking coal and not any regard for it. I never mentioned coking coal with regard to Palisade nor to Bowie.

Q. Nor to Sommerset?

A. Bowie, I said.

Q. Or Carbondale?

A. I spoke about Bowie——

Q. In your testimony you spoke about Sommerset and Carbondale I believe?

A. I did not. Not a word.

Q. Pardon me. In your cross examination of me this morning when I was on the witness stand, in an exhibit

I introduced on rates from Carbondale and Sommerset, were you talking about coking coal?

A. No, sir, you were.

Q. Were your questions directed to——

A. Yes, at that time, that is true. But these rates that I have mentioned in my presentation have nothing to do with coking coal at all, and they are not set out in your tariffs as coking coal. These rates——

[fol. 468] Q. Mr. Manley, do you recall what the present $1.90 rate from Columbia and Sunnyside to Ironton, what kind of coal that applied to?

A. Seven inch crushed coking coal.

Q. And also to slack?

A. I am not so sure about that.

Q. Would you take my word for it that last fall the coking coal rate to points Geneva and south was made to apply——

A. I recall that it was.

Q. And possibly the same rate——

A. That is the same rate——

The Reporter: Just a minute gentlemen, One at a time.

A. What are you talking about, you are in again. This man you interrupt him, you see.

But I want to say this, as for Utah, that rate of 7 inch crushed coal, is not the same coal as the slack coal which is 1⅝ by zero. If the 7 inch by zero were shipped by a commercial operator anywhere else, it would take the lump rate, unless specific provisions were made for it in the tariff.

Q. Now let's return to Exhibits 72 and 73. I believe in answer to my question you said that you thought the preservation of existing differentials was all right?

A. I say differentials once established should be maintained unless they are attacked and changed by reason of activity in that direction, change in the rate.

[fol. 469] Q. Palisade is in a group that is differentially related to Castle Gate is it not?

A. No, sir, it is not.

Q. You say it isn't?

A. In the Castle Gate group?

Q. No, I said it is in a group that is differentially related.

A. To some other group?

Q. To the Castle Gate group?

A. If is not in the Caste Gate group I will say that, I do not know what group—it is Palisade and something else, I have forgotten the name of it.

Q. First, will you answer my question. Is it in a group other than the Castle Gate group, which group whatever it is, bears some sort of a fixed rate relationship to the Castle Gate group?

A. That is right, yes.

Q. And turn please to Exhibit No. 73.

A. Yes, sir.

Q. And the groups there that we are talking about or the —origin point that we are talking about, is it Bowie,——

A. Bowie, yes——

Q. That point is in the so-called Bowie-Sommerset group in western Colorado.

A. That is right.

Q. And there again it is in a group other than the Castle Gate group, but which group is on some sort of a relationship with the Castle Gate rates.

[fol. 470] A. There was a dollar differential established there, as you know, for more coal from that area.

Q. And the $2.90 rate which you point out on the bottom line of this exhibit, is a dollar higher than the rate which causes all of this cross examination of $1.90 from——.

A. Oh I see, you did that to maintain that differential, you reduced the rate?

Q. Yes, sir.

A. Oh yes.

Q. And you have given your blessing to the differentials——

A. No, not such a fool thing as that, I didn't, nor any of those manipulations where you entirely emasculated Ex Parte 175 in each of these districts.

Q. On Exhibit No. 70 again, Mr. Manley, will you please look at Line 4.

A. Yes.

Q. And under Sub-heading 5, which is Salt Lake City,——

A. What do you mean Sub 5, Salt Lake you are talking about, No. 70?

Q. Column 5, the total columns there, it is the first one in the second block,—second one in the first block.

A. Yes, sir.

Q. It shows slack coal rate effective December 31, 1946, as $1.55?

A. Yes, it shows that.

[fol. 471] Q. And the total increases in Line 5 are shown to have been 78 cents?

A. That is right. That was a full increase authorized by this Commission.

Q. And that all that was put on that rate up to and including May 1st of last year?

A. Up until May 1, 1953, yes.

Q. Now during the same period, have you got in your records the price of slack coal in 1946 at Salt Lake City?

A. I have nothing to do with the prices.

Q. Well at the mine?

A. No, sir.

Q. You don't know what they are?

A. I don't know and nobody else does either, except those who ship it and sell it.

Q. We have a statement here that indicates that in 1946 your price for this particular kind of slack coal was $3.16 at the mine, would you accept my word for it that this is obtained from a reliable source as an authentic document?

A. I don't know about your reliable sources, there may be some question, I would be dubious about accepting them.

Q. Well they were obtained from——

A. I want to say this to you about prices. Each operator makes his own price except when he is controlled by the Government, he sells it at his own price and in how own [fol. 472] market, and I don't know what he sells it at.

Q. Well do you quote prices today?

A. No, sir.

Q. Do any mines quote prices?

A. They advise customers I suppose, what their prices are.

Q. I asked you if the present price on slack coal at

Carbon County mines was $5.25 a ton, would you say that that sounded about right?

A. No. I don't know.

Q. Well it is liable to be right isn't it?

A. I don't know, I have no knowledge of the prices of slack coal in the Carbon County mines than you have, Tom, you apparently have more than I have, and your pal there is no better apparently. He buys one car.

Q. Well all I can get out of this and I don't want to prolong it, is that I don't know that can tell us, why you are so definite in your conclusions that the increases in freight rates are going to put you out of business when you don't know what the pruduct sells for.

Exam. Witters: That is argumentative.

A. Tom, I don't sell any coal, each producer sells his own coal, and if you know anything about the production and distribution of coal, which you should know, you wouldn't need to ask me such a fool question.

Q. Well I don't consider them fool questions.

[fol. 473] A. Well you know as much about the shipment of coal and production as anybody does, much more so than I do, because you have access to everyone shipping. Tom, I didn't mean to offend you, I didn't mean that, I apologize.

Exam. Witters: Confine it questions and answers please.

The Witness: Sir?

Exam. Witters: Please confine this to questions and answers.

Mr. Earley: I think that is all I have.

The Witness: Okey, sir.

Exam. Witters: We will take a short recess.

(Recess taken)

Exam. Witters: We will receive in evidence Exhibits 68, 69, 70, 71, 73 and 73-—.

Mr. Fitzpatrick: We haven't finished with cross examination, Mr. Examiner.

Exam. Witters: Do you still want to defer that?

Mr. Fitzpatrick: Well just a minute until we finish up.

Exam. Witters: All right.

Mr. Rampton: May I put Mr. Balser on at this time for a few questions?

Exam. Witters: Very well.

(Witness temporarily excused)

H. L. Balser was sworn and testified as follows:

[fol. 474] Direct examination.

By Mr. Rampton:

Q. Will you please state your name?

A. H. L. Balser.

Q. Where do you reside, Mr. Balser?

A. Salt Lake City.

Q. And what is your business or occupation?

A. Vice-President and General Manager of the Bamberger Railroad Company.

Q. And the Bamberger Railroad Company is one of the applicants in this case, isn't it?

A. It is.

Mr. Miner: One of the respondents.

Mr. Rampton: Respondents.

Q. Mr. Balser, what is the relationship, if any between your intra state rates and your division of revenue on your interstate shipments?

Mr. Fitzpatrick: Just a moment. I am objecting to this, Mr. Examiner, because this question relates to something that has nothing whatever to do with the matters at issue here. The matter of divisions are not involved in rate structures as a matter of fact, and the answer wouldn't pertain to any issue involved in this proceeding.

Exam. Witters: Yes, I will exclude anything relates to division.

Mr. Rampton: Then I would like to make a statement of [fol. 475] offer into the record.

Exam. Witters: You may.

Mr. Rampton: That State of Utah and the Utah Citizens' Rate Association, will present to this Commission

an exhibit on the returns of the Bamberger Railroad Company, in which will be intermingled and not divided, the interstate and the intrastate. As a means of better understanding that revenue picture we offer to show by Mr. Balser, that on the division of revenue the intrastate rates form a ceiling for the division on interstate shipments. We think it is material to explain this other exhibit, not because we are attempting to attack, or because we are attempting to disturb any division of revenue in this case, but because we feel that it is necessary to an understanding of the exhibit that we intend to present.

Mr. Fitzpatrick: To all of which offer of proof respondents object.

Exam. Witters: Well, my ruling will be the same.

Mr. Rampton: Very well. One other question then, Mr. Balser.

If the Commission please, although your ruling is going to exclude the evidence, I made an offer of proof. Would it be proper to let it come in so that it would be there from the witness, and then reject it. I think without doubt this case will be reviewed, and we wouldn't want the necessity of sending it back for some bit of evidence that isn't estab- [fol. 476] lished but which is in the record on an offer.

Exam. Witters: Well your offer of proof is in the record.

Mr. Rampton: That is right. But that doesn't prove it, that just—if there was anything to be based on that, all they would have to do is to say, go back and get the evidence in, wouldn't they?

Exam. Witters: I don't quite understand your question.

Mr. Rampton: I have made an offer of proof. I have told you what we hoped to put in. Now that doesn't let it get on the record by this witness. So let's suppose that the whole Commission, or the court that reviews this case, were to say, that is material matter. Then they couldn't take is as proved by my offer of proof, they would have to say send an Examiner out there and find out whether that is true or not from Mr. Balser, whereas, if we let it into the record and then strike it out, we don't face that problem.

Mr. Fitzpatrick: Well Mr. Examiner, the counsel has already made his offer of proof, and——

Mr. Rampton: Well will you obviate that then by stipulating that Mr. Balser would answer in accordance with my offer of proof if he were permitted to answer?

Exam. Witters: Well I see no objection to that form of procedure if you prefer it.

Mr. Rampton: Well I prefer it.

Mr. Miner: It is entirely unusual it seems to me and [fol. 477] contrary to any practice that I have seen before, when an offer of proof is made that is supposed to show what he would have intended to prove, and if the offer is denied I——

Mr. Rampton: I would like to establish it as this time. This is not a jury, you do it like this every time in court.

Mr. Miner: Well I dispute that.

Mr. Fitzpatrick: Well, Mr. Examiner, let him state his offer of proof and we make our objection. I don't——

Exam. Witters: He has already done that.

Mr. Fitzpatrick: That is right.

Exam. Witters: If he prefers to do it the other way.

Mr. Miner: If the witness was offering something that was incompetent evidence and it was ruled out, and they had the opportunity to go forth and give all the evidence and then decide afterwards it puts the Examiner in the position of not being able to decide anything. We will put in the record and disregard the Examiner's ruling entirely.

Exam. Witters: Well that is understood that I will strike it out.

Mr. Fitzpatrick: Well Mr. Examiner, I wonder if he just couldn't make his offer of proof, he has made one offer of proof, and I wonder if he couldn't go ahead and offer all that he intends to prove in his offer of proof, and then we will make our objections.

Mr. Rampton: That has already been done.

[fol. 478] Mr. Miner: That is the very purpose and the legal basis of an offer of proof.

Mr. Fitzpatrick: Oh certainly.

Mr. Miner: After the evidence has been ruled on.

Mr. Rampton: My point is this, if the Commission up there says Examiner Witters is wrong, and they think they ought to hear what Mr. Balser had to say there would

be no need for Examiner Witters to come back to Salt Lake again to find out what he would have to say.

Mr. Miner: In other words, if you have a case in court and you went up on appeal, you want to have everything in so that the Appellate Court wouldn't have to send it back for retrial.

Mr. Rampton: Why certainly. You have done that dozens of times yourself.

Mr. Miner: No I haven't. I will take my chances on appeal, if I don't think that my case is——

Mr. Rampton: I think that he has ruled that I may go ahead.

By Mr. Rampton:

Q. Mr. Balser, is it correct that as a general—is it correct that your intrastate rates form a maximum amount you may receive under the division of revenue?

Mr. Fitzpatrick: Objected to, Mr. Examiner, on the ground that the answer would be immaterial and irrelevant, to the issues in this case.

Exam. Witters: Well, he may answer with the under-
[fol. 479] standing that I will strike it.

A. Locals are usually placed as a maximum, but not in all instances.

Q. But generally that is true.

A. Generally locals are placed as a maximum.

Q. And that is true of your company?

A. That is correct.

Exam. Witters: The answer will be stricken.

Mr. Rampton: Thank you. Now one more question.

Q. What is the average time lag between—or I should say the maximum time lag between your rendering of service by your company and the receipt of the revenues therefor?

Mr. Fitzpatrick: Objected to Mr. Examiner. The answer is immaterial and irrelevant.

Exam. Witters: The objection is overruled.

A. The interstate Commerce Commission placed a maximum of 96 hours on the collection of freight charges under Ex Parte—I think it is 72.

Q. And you observed that except in a few instances where you might have had debts or something of that sort? Where somebody fails to make payment?

A. Well I would have to make a little better statement of that. Freight charges are payable on delivery of the freight, but the Interstate Commerce Commission permits a credit period on not to exceed 96 hours.

[fol. 480] Mr. Rampton: I think that is all.

Mr. Sohm: I have one question.

Mr. Miner: Now wait a minute. I move to strike the answers as given here, by the witness.

Exam. Witters: The motion is overruled.

Cross examination.

By Mr. Sohm:

Q. Mr. Balser, you are what is termed an electric railroad?

A. We had, up to a short time ago, been operated by electric energy.

Q. For the last two years your locomoties have been diesel locomotives is that right?

A. No. I think we ceased to operate by electric energy in about September of 1952.

Q. And your operations are strictly diesel now?

A. The rail operations, yes.

Mr. Sohm: That is all.

Mr. Miner: Just a question.

By Mr. Miner:

Q. Mr. Balser, on this question that Mr. Rampton asked you a moment ago as to the time of your collections, and you stated under the ICC regulations a maximum of 96 hours for collection of those rates?

A. Yes.

Q. That is true where you are the collecting line, where

it is taken to destination on your line, but something that [fol. 481] moves out to foreign destinations your rates on that may not be collected for weeks, isn't that true?

A. That is true. They move on a collect basis, the line at destination of the shipment collects the freight charges.

Q. So where you gave the anser of 96 hours, does that apply only to the traffic on which you are the destination line?

A. That is correct.

Mr. Miner: That is all.

By Mr. Fitzpatrick:

Q. Mr. Balser, how are you classified by the Interstate Commerce Commission, as an electric line?

A. We are. We account by the electric classification.

Q. Are you a Class 1 electric line, or are there any classes in the electric classification?

A. There are classes. We are not yet classed as a Class 1 electric line.

Q. You are classed as an electric line?

A. Yes.

Mr. Fitzpatrick: Thank you, Mr. Balser.

Redirect examination.

By Mr. Rampton:

Q. Is there a maximum time in which your receiver line must remit to you your portion of the freight?

A. No, there is no law, it is a rule of settlement between carriers that the freight charges collected in a current month are settled in a following month.

Q. By——

[fol. 482] A. If the way bill enters the account during the current month.

Q. Any particular day of the following month?

A. By the 20th day of the following month the accounts are required to be in the possession of the other carriers, and they draw draft for the amount reported, subsequent to that date.

Mr. Rampton: I have no further questions.

Recross examination.

By Mr. Fitzpatrick:

Q. And that lag can run up to forty-five and fifty days, can't it?

A. Oh yes.

Mr. Fitzpatrick: That is all.

By Mr. Rampton:

Q. Do you keep your accounts as a Class 1 carrier, even though you have not been so classed, do you not?

A. Not in all particulars, no.

Q. Generally you follow the Class 1 form?

A. No, we do not.

Mr. Rampton: That is all. May Mr. Balser be excused, he has a meeting.

Exam. Witters: Yes.

Mr. Rampton: Thank you very much, Mr. Balser.

(Witness excused)

Exam. Witters: Please recall Mr. Manley.

[fol. 483] B. P. Manley upon being recalled, testified as follows:

Cross examination.

By Mr. Fitzpatrick:

Q. Mr. Manley, I have just one or two questions I believe, if you will bear with me. Now referring to your Exhibit No. 71.

A. I have it.

Q. That Rock Springs-Kemmerer, Wyoming, group, extends from about Thayer Junction to Kemmerer, a distance of approximately 102 miles, is that about correct?

A. It is something like that, between 90 something and 100, I don't know exactly. It is spread between the Rock Springs-Kemmerer district?

Q. Yes, and that same rate would apply to——

A. It does in each case.

Q. Now there is also a Castle Gate group isn't there?

A. Yes, sir.

Q. And what is the extent of the Castle Gate group?

A. Oh, I think it has about 35 miles on the periphery.

Q. Yes. In other words, Castle Gate is somewhere in between the two ends?

A. Yes, it is more or less sort of an ampitheater, Castle Gate, about the center and probably about 25 or 26 miles to some of the other mines, the most distant mine.

Q. Now refer to your Exhibit No. 69.

[fol. 484] A. Yes, sir.

Q. In the top illustration there you have Preston, Idaho. Preston, Idaho, is also in a group isn't it?

A. I don't think so, not that I know of.

Q. Not a destination group?

A. Well I can't answer that whether Preston is—you mean falls within a group of similar rates?

Q. Yes.

A. Well I don't recall that. I think it is very limited if it is, Mr. Fitzpatrick.

Q. And you don't happen to know what reasons that might have compelled any of these rates to—any of these interstate rates that you have used in your exhibits, have you?

A. The interstate rates?

Q. Yes.

A. No, they just grew, Mr. Fitzpatrick.

Q. Now let's look at your Exhibit No. 70 for a moment.

A. I have it.

Q. Do the rates shown in the sections 5, 6 and 7, reflect all of the ex parte increases granted by the Interstate Commerce Commission since December 31, 1946, except the 175?

A. They do, sir.

Q. And is that a difference in the percentage as between Lines 1, 2 and 3, listed in the top of Exhibit 70, and Lines

4 to 9, in the lower portion, due to the effect of the maxi-
[fol. 485]. mum hold downs which were prescribed by the Commission?

A. I think that is related to it. That is the reason of itself.

Mr. Fitzpatrick: That is all, thank you Mr. Manley.

Mr. Miner: Just a question or two.

Cross examination.

By Mr. Miner:

Q. You referred to the increase in the use of natural gas. You didn't mean by that, did you Mr. Manley, to infer that the change from coal to natural gas was caused entirely be the increase in freight rates?

A. Oh no. The transportation cost is certainly a large element in it, as you know, we have recently lost one of the large utilities to gas, and without assistance from the railroads it wasn't possible for us to match it.

Q. Well as a matter of fact you are referring to your Exhibit No. 70, wherein on Line 5 you show the total increases authorized by the Public Service Commission on slack coal to be 78 cents?

A. That is the total amount, yes, sir.

Q. During the same time that that period covered, wherein the freight rates were increased 78 cents, do you know as an actual matter of fact the price of slack coal increased about 2½ didn't it?

A. Two and a half what?

Q. About $2.50.

[fol. 486] A. It probably did, I can't recall in that time since '46, oh, I don't remember. And I know only about prices in general, sir, just like you do. I buy it and pay for it.

Q. But that would be close wouldn't it?

A. Well I can't answer that, I just don't know. I know that because of rising costs, wage increases, that prices had to go up, and I also know that they have not been reflected in prices at which coal must be sold today.

Q. You also know that a lot of them have transferred

from coal to gas, particularly of private consumers, was made at a time—at times when there were strikes when coal was not available, isn't that correct?

A. There was no time, sir, when coal was not available. In any strikes that we had in this area no one suffered from want of coal at any time.

Q. Would you say that I was wrong then if I told you that personally I converted a coal furnace to a gas furnace when I was out of coal and couldn't get any during a strike?

A. No, I didn't——

Mr. Rampton: That is immaterial and time consuming, what he did I don't think has any bearing on here. Maybe he doesn't like to shovel coal.

Exam. Witters: He may answer.

A. Oh, I wouldn't know what your judgment or opinion was, but I am confident though that if you wanted coal, or [fol. 487] you merely wanted an excuse to turn to gas because you didn't want to shovel coal, I expect probably that was the reason.

Q. Well you will admit that this change from the use of coal to gas has been caused by a number of factors and you couldn't blame it in any respent on transportation alone, could you?

A. Transportation played its part of course, but not in a major part, no.

Mr. Miner: Thank you.

Q. There were likewise some conversions to fuel oil as well as gas, were there not?

A. Yes, some few.

Mr. Miner: I think that is all.

Exam Witters: Do you wish to offer Exhibits 68 to 73, inclusive, at this time?

Mr. Fitzpatrick: I have no objection, Mr. Examiner.

Exam. Witters: They are received in evidence.

(Protestants' Exhibits 68 to 73, inclusive, received in evidence)

Mr. Manley: Thank you. May I be excused?

Exam. Witters: Yes.

(Witness excused)

Exam. Witters: Off the record.

(Discussion off the record)

HERMAN C. KROLL Upon being recalled, testified as follows:

[fol. 488] Cross examination.

By Mr. Rampton:

Q. Mr. Kroll, you told yesterday that in regard to the Union Pacific Railroad, the expenses which are considered in arriving at your net railway operating income as shown in the composite figure in Column 7, on Exhibit No. 2, include $11,000,000.00 of Federal Income Tax on the non-utility income?

A. That is practically correct, $10,900,000.00.

Q. Now if that $11,000,000.00 was removed as a utility expense, then the net railway operating income shown on Column 7 would become $108,000,000.00 in round figures would it not?

A. I know that the elimination of the $11,000,000.00 of income taxes on non-transportation income on the Union Pacific, raises their rate of return from 2.58 to 3.56, and it would have a slight bearing on the 3.44, which is shown in Column 7.

Q. Will you accept my figure of 3.82, or do you want to check?

A. Well, just a moment. Now that sounds approximately correct, yes, sir.

Q. Now these other roads that we are concerned with here, the other four roads, have very little if any income tax allocable to non-railway operating income do they?

A. Little if any at all, yes.

Q. So that is a minor or negligabl factor in those other roads?

[fol. 489] A. That is correct.

Q. So eliminating that $11,000,000.00 as a railway operating expense we get the following rates of return on these roads, do we not. 3.568——

Mr. Fitzpatrick: Take it a little slow there.

Q. (Continuing) On Union Pacific?

A. Well I have 3.56.

Q. 6.06 on the D. & R.G.

A. That is right.

Q. 3.48 on Southern Pacific.

A. Right.

Q. 97/100ths on Western Pacific?

A. No, 97/100ths was on the Utah.

Q. On the Utah, I beg your pardon, and 5.75 on the Western Pacific?

A. That is correct.

Q. Now with regard to this income tax, that is the only instance wherein your accounting for Class 1 railroads do charge a non-utility expense to utility income, is it not,—is a reduction of utility income?

A. It is the only incident that I know of, but it is in accordance with the Commission's accounting rules.

Q. However, leaving that out I think that you and I could agree that for rate making purposes it shouldn't be in there?

A. That would be my answer, yes.

[fol. 490] Q. Mr. Kroll, you are concerned in your job of course, not only with the private roads, but with—you show on Exhibit No. 2 with—you are concerned and familiar generally with all of the roads in the Western Territory are you not?

A. That is right.

Q. And I suppose you are somewhat familiar with the roads of the official territory and the southern regions?

A. To a more limited extent than I am in the West, yes.

Q. Is this a fair statement, that the average rates of return on the five roads which you have shown on Exhibit No. 2, are approximately 2 percentage points above the average rate of return for all the roads in official territory?

A. Just a moment.

Q. I beg your pardon. In view of the fact that you have the figures there——

A. Well I don't have the figures, we have some figures of what would be indicative of what the 1953 rate of return probably was.

Q. What do your figures indicate that it was in official territory, what it was in official territory?

Mr. Miner: If the Examiner please, I don't know what benefit we can get out of comparing the rate of return of roads out here with the rate of return elsewhere, either in official territory or otherwise over the United States. I think it is entirely——

[fol. 491] Exam. Witters: You can put that in as part of your case if you wish, the witness probably doesn't have those figures.

Mr. Rampton: Well he said he had them.

Exam. Witters: Oh he has them?

Mr. Rampton: Yes.

The Witness: I have an estimate which indicates approximately what the rate of return was in official territory, Mr. Examiner.

Mr. Rampton: He is going to give us a close figure anyway.

Mr. Miner: But my position is this, that the comparison of those with railroads out here is not going to serve anything for us and it is immaterial.

Exam. Witters: Well, I will have to overrule that objection.

A. The figures which I have in front of me indicate that the 1953 rate of return in official territory must have been something around 3.78 percent. Now that may or may not be right.

By Mr. Fitzpatrick:

Q. 3.78?

A. That is right.

By Mr. Rampton:

Q. You don't have that figure with Pocahontas eliminated do you?

A. Eliminating the Pocahontas, it is 3.55.

Q. Now what do you show for western classification territory?

A. 3.74.

[fol. 492] Q. And for the southern classification territory?

A. Southern region 5.09. Of course you understand that the Pocahontas region is actually a part of the southern district, but by reason of its type of rates assessed that is usually included with the eastern district, so that the southern region stands alone.

Q. Well that figure for the southern region does not include Pocahontas?

A. No, it doesn't.

Q. And of course you have eliminated that from the eastern region by your second figure?

A. That is right.

Q. Now making reference for a moment to Exhibit No. 1. You show the revenue per ton mile for the Western District, the revenue per ton mile for the United States as a whole, and you show the change from a base point of 100 in 1939. Now in 1953 what were the figures—now it is not the percentage of increase, it is the actual figures, your revenue per ton mile?

A. The Western District, 1.431 cents, and in the United States 1.478 cents.

Q. Mr. Kroll, it is true is it not, that in the Western District much more than the United States as a whole, and in the State of Utah much more than in the Western District, your traffic is made up of products of the mines?

[fol. 493] A. I would agree to the statement that in the State of Utah more than in the Western District it is products of mines, but whether the Western District exceeds the East in products of mines I would hesitate to hazard a guess, because of all the coal produced in official territory.

Q. We can agree so far as the Western District as a whole is concerned, the—as compared to the State of Utah—the most of your traffic in the State of Utah is much more heavily weighted percentagewise in favor of products of the mines?

A. I would consider that to be a true statement, yes.

Q. Now this is also true is it not, that the—your lowest cost per ton mile of handling traffic applies to that traffic that moves in gondola cars?

By Mr. Fitzpatrick:

Q. Do you have anything on costs of individual cars?
A. I would hesitate to say that, Mr. Rampton.

By Mr. Rampton:

Q. Was Mr. Parr's study on costs of moving traffic in various types of equipment referred to your division for study?
A. No, sir.
Q. Do you recall that that was what his study did show, do you not, that the gondola was by far the cheapest?
A. I believe that is right, that is predicated on Rail Form A, which the carriers do not agree is a proper method of determining costs.
[fol. 494] Q. But on the basis for determination of Rail Form A, it shows the traffic handled in gondolas is handled at considerably lower cost?

Mr. Fitzpatrick: I object to that Mr. Examiner. Here we are getting into another case again, and without the benefit of the record before us——
Mr. Rampton: Rail Form A is not part of any particular case.
Mr. Fitzpatrick: Well it is not a part of this case.
Exam. Witters: He may answer.

A. I believe that Mr. Parr's exhibit indicates that the gondola traffic is the cheapest, but whether it is substantially so or not, I don't know.
Q. And of course products of the mines move pretty much in gondola type cars, do they not?
A. Generally speaking, yes. However, I would like to make this observation, Mr. Rampton, that Rail Form A which was the basis of part of Mr. Parr's calculations, doesn't give much consideration to the rigors of the territory in which the traffic is being moved.

Mr. Rampton: I believe that is all the cross examination I have of Mr. Kroll.
Exam. Witters: Nothing on redirect?
Mr. Fitzpatrick: Nothing.
Exam. Witters: You may be excused.

(Witness excused)

[fol. 495] Mr. Rampton: I would like to have this marked as Exhibit No. 74 for identification.

Exam. Witters: It may be marked Protestants' Exhibit No. 74 for identification.

(Protestants' Exhibit No. 74, Attorney Rampton, marked for identification)

Mr. Rampton: May the two page exhibit be marked as—or three page exhibit be marked No. 75 for identification.

Exam. Witters: It may be marked No. 75 for identification.

(Protestants' Exhibit No. 75 Attorney Rampton, marked for identification)

Mr. Fitzpatrick: I have received only two exhibits, one a one page and one a three page.

Mr. Rampton: That is all you are supposed to have.

Mr. Fitzpatrick: Two exhibits?

Mr. Rampton: Yes.

H. E. Colwell was sworn and testified as follows:

Direct examination.

By Mr. Rampton:

Q. Will you please state your name?

A. H. E. Colwell.

Q. Where do you reside, Mr. Cowell?

A. #424 Kearns Building.

Q. Salt Lake City?

A. Salt Lake City.

[fol. 496] Q. What is your business or occupation?

A. I am Traffic Manager for the Utah Citizens Rate Association.

Q. How long have you held that position?

A. For the past eight years.

Q. Will you state what the nature of your duties are for the Citizens Rate Association?

A. In general they consist of acting in a consultant capacity to the members of that association. The members consisting mainly of wholesalers, some manufacturers.

Q. What other experience have you had in dealing in railroad rate determinations?

A. I was with the National Lead Company, in their traffic department. Prior to that with Motor Carriers, and with the Office of Defense Transportation as an Examiner.

Q. How long were you with the ODT?

A. Two years.

Q. Mr. Colwell, you have before you two exhibits, marked for purposes of identification as Nos. 74 and 75, were they prepared by you or under your direction?

A. Yes, they were.

Q. I will ask you to proceed with an explanation of first, Exhibit No. 74?

Mr. Miner: Just a moment. We object to any explanation at this time, on the basis the witness hasn't been properly qualified to give any evidence with respect to what is [fol. 497] shown in the exhibit.

Mr. Rampton: I think I will submit his qualifications.

Exam. Witters: The objection is overruled.

A. Shall I proceed, Mr. Rampton?

Q. Yes.

A. This exhibit relates to shipments of iron and steel, which several of our members in the Utah Citizens Rate Association ship substantial quantities from Geneva to Salt Lake City, Utah. This exhibit came into being in response to one of Mr. Watson's exhibits with respect to manufactured iron and steel articles, and we have here attempted to relate similar movements for similar distances from three of the producing centers in the West, Geneva to Salt Lake City, Utah, Kaiser, California, to Los Angeles, Pittsburg, California, to San Francisco, California.

Of the three distances involved the Geneva to Salt Lake distance is the least, being 38 miles, Kaiser to Los Angeles 46 miles, Pittsburg to San Francisco 50 miles.

The significant figures are in Column 5 and Column 8. We note that from Geneva to Salt Lake City the rate per ton at the present time is $3.50 on a 40,000 pound car,

$3.11 on an 80,000 pound car. From Kaiser, a greater distance to Los Angeles, 80,000 pound minimum, the rate is $1.96 per ton, from Pittsburg- on a 30,000 pound minimum, the rate is $2.76 per ton, Pittsburg- to San Francisco on [fol. 498] a 60,000 pound minimum, the rate is $1.96 per ton, producing ton mile revenues with respect to minimum carloads as shown in Column 8.

You will note that Lines 1 and 2, reflecting the intrastate Utah situation, produces ton mile revenues at least double the ton miles revenues accruing from the California intrastate shipments.

At the present time the California intrastate rates are subject to the 175 increase, and that increase has been included.

Q. Mr. Cowell, do you know what railroads perform this California movement that is shown here?

A. I think Kaiser is served by the Southern Pacific and the Santa Fe Railroads, and the Pittsburg- to San Francisco would be by those same two carriers.

Q. In other words, the Southern Pacific, whose figures are in evidence here by the carriers, also serves both of these points down there?

A. Yes.

Q. And what company renders the service from Geneva to Salt Lake?

A. The Denver & Rio Grande Western and the Union Pacific Railroads.

Q. Mr. Cowell, now we will return to your Exhibit No. 75.

A. I have it.

Q. Will you explain that exhibit?

[fol. 499] A. Exhibit No. 75 deals exculsively with L.C.L. shipments from Salt Lake City, Utah, to points in the trade area, both intrastate and interstate.

The commodities reflected on the exhibit are commodities moving in normal commerce from Salt Lake City. We have attempted to select destinations where the intrastate and interstate distances would be relatively the same.

As you will observe, under paint the rate to Pocatello, Idaho, as shown on Line 4, for a rail distance of 170 miles, is 90 cents per hundred weight, and to Thompson,

Utah, or rather to Delta, Utah, a distance of 135 miles intrastate, a rate of 93 cents per hundred weight. Of course similar comparisons can be drawn between the other points shown.

Similarly, on refrigerators, as shown in Listing 2, Pocatello, $1.25, Delta, Utah, $1.17. In each of these instances the interstate rate includes the Ex Parte 175 increase within the rate.

Radios and television sets, we notice from Pocatello, a distance of 170 miles the rate is 90 cents, to Brice, Utah, a distance of 126 miles, $1.40.

The balance of the items on this exhibit reflect similar situation with respect to the destinations shown.

Q. Mr. Colwell, I will ask you if you have made a selection here for the purpose of showing only those rates where the intrastate rates are currently higher, or does this rep- [fol. 500] resent in your opinion a pattern that exists throughout this particular L.C.L. territory?

Mr. Fitzpatrick: Objected to, unless the witness is qualified further.

Exam. Witters: He may answer.

A. Generally speaking the rates into southern Idaho as shown on Mr. Watson's exhibits, are what we call merchandise rates, and are established as a percentage of the respective class rates. That same situation does not prevail generally within the State of Utah, so that on intrastate movements the shipper must pay, or the consignee, as the cases may be, must pay generally speaking class rates, whereas in the southern Idaho trade area the rates paid are a lower percentage of the respective class rates, and that would reflect a general pattern, so far as distribution from this area is concerned.

Q. In other words the only place where Mr. Watson could have got the result that he did was on the particular study he made from Salt Lake area into southern Idaho?

Mr. Miner: Now just a minute, we object to that as very leading and the witness isn't testifying, his counsel is apparently testifying.

Mr. Rampton: I will reframe my question.

Q. I will ask you whether or not in your opinion the general pattern, except for the merchandise rate to Idaho, is as shown in your Exhibit No. 75?

[fol. 501] Mr. Miner: I object to that as being leading.

Exam. Witters: Well reframe the question.

Q. All right. What in your opinion more accurately reflects the general pattern out of this area, your exhibit or Mr. Watson's exhibit?

Mr. Miner: That calls for a conclusion of the witness. A comparison of the testimony before the Commission, we object to it.

Exam. Witters: He may answer.

A. Well I think the exhibit of Mr. Watson dealt only with northbound situations from Salt Lake City, that would be points on the Union Pacific Railroad to the north. We do have some merchandise rates to the northern portions of the state which do not prevail on the Rio Grande to the west toward Price and Thompson. Generally speaking I would say that the majority of the state does not have available the merchandise rates of the type available into southern Idaho.

Q. And your Exhibit No. 75 is trying to show those movements where that is not available?

A. Right.

Q. And in your opinion shows typical cases?

A. Yes.

Mr. Rampton: You may cross examine.

Cross examination.

By Mr. Fitzpatrick:

Q. Mr. Colwell, your adjustment from Salt Lake City [fol. 502] and a few other Utah points into Idaho points, taking first the merchandise rates, were established to meet truck competition, weren't they?

A. I believe that is right.

Q. And that is also true of the class rates that were established?

A. Well, I wouldn't say that with respect to the class rates, the class rates are on about a 20 percent higher level than the merchandise rates.

Q. There was some reduction in class rates, first, these merchandise rates were—been in about two months haven't they?

A. No, they have been in for several years.

Q. From Salt Lake City?

A. From Salt Lake City into southern Idaho, yes.

Q. And weren't special class rates also put into effect?

A. Not to my knowledge.

Q. Now referring to your Exhibit No. 74, have you ascertained whether there is any movement on this Pittsburg to San Francisco 30,000 pound rate?

A. No, I have no information with respect to actual movements on these rates. I just presume that the rate was established to meet a particular movement.

Q. And would your answer be the same as to all of those —those three points, Kaiser, Pittsburg, to Los Angeles and San Francisco, on your Exhibit No. 74?

[fol. 503] A. Right.

Mr. Fitzpatrick: That is all, thank you, Mr. Caldwell.

Cross examination.

By Mr. Miner:

Q. Did I understand you to say that these tables of rates that you mentioned going from Salt Lake into Idaho points also exist to some extent intrastate from Salt Lake north, within Utah?

A. Yes, I think you have some merchandise rates in the Union Pacific tariff with respect to your branches running toward Preston through Logan.

Q. To the Cache Valley area?

A. Yes.

Q. And also in the Box Elder County area?

A. Yes.

Q. As a matter of fact, your population in the State of Utah has larger centers north of Salt Lake considerably than it does south, isn't that true, there is more population in the northern area of the state than there is in the southern part of the state?

A. I haven't the faintest idea as to how the population is set out.

Q. Do you know what the population of Thompson, Utah, is?

A. I haven't any idea.

Q. It is just a point on the map isn't it?

A. However, I think Thompson has become relatively [fol. 504] important shipping point because of our development in this uranium.

Q. Just recently with the uranium activity out there, before that it was nothing more than a dot on the map wasn't it? Relatively speaking?

A. I would presume that is right, yes.

Q. Do you know how many truck lines there have been serving Thompson prior to this uranium movement?

A. Well Thompson would have been served in connection with Carbon Motorways.

Q. It's beyond Carbon Motorways area, except since Carbon Motorways took over the Rio Grande-Colorado Lines did it not?

A. Well I think Carbon Motorways originate traffic which they turn to Moab at Price, in other words, Moab cannot originate at Salt Lake so far as intrastate traffic is concerned.

Q. But Carbon takes it to Price and from there on it is the Moab?

A. Yes.

Q. So there is really in effect one truck line up in that area?

A. Yes.

Q. All right. Do you know of more than one truck line serving Delta, Utah?

A. Not intrastate.

Q. Intrastate?

A. No, I don't believe there is more than one.

Q. From Salt Lake City north into northern Utah and [fol. 505] Idaho points, there are several aren't there?

A. Just one.

Q. Just one?

A. Yes, intrastate. The Fuller-Toponz Truck Company.

Q. Well into the Idaho points there are at least six aren't there?

A. That is an interstate movement there, yes, there are several carriers that have interstate authority, and there are several carriers having interstate authority to Delta for example. If you are to speak of interstate authority——

Q. Can you name more than one truck line having interstate authority in Delta?

A. I would have to check.

Q. Delta is not on Highway 91 is it?

A. I would have to—it is on 89 is it?

Q. No, it is Highway 6.

A. I actually would have to check to speak with any authority with respect to the truck lines serving there, but there is considerable difference between the interstate authority in Utah and the intrastate. We find many cases where several interstate carriers can serve a point within the State of Utah.

Q. And that is true usually on Highway 91, running from Salt Lake to Los Angeles and Salt Lake to Pocatello, but it is not true on the other highways is it?

A. Well I will take your word for it if you state that, I [fol. 506] don't know about that without checking.

Mr. Miner: That is all.

Mr. Rampton: May Exhibits 74 and 75 be received in evidence.

Mr. Fitzpatrick: No objection.

Exam. Witters: They are received in evidence.

(Protestants' Exhibits 74 and 75, Witness Colwell, received in evidence)

Mr. Rampton: May Mr. Colwell be excused?

Exam. Witters: You may be excused.

(Witness excused)

Exam. Witters: Off the record.

(Discussion off the record)

T. E. THAIM Was sworn and testified as follows:

Direct examination.

By Mr. Sohm:

Q. Will you state your name?
A. T. E. Thaim.
Q. And your address?
A. Salt Lake City.
Q. And you are employed by whom?
A. By the Public Service Commission of Utah.
Q. What is your responsibility in connection with that employment?
A. I have to do largely with rate case matters involving [fol. 507] electric gas, telephone, water, transit utilities.
Q. You take care of most of the accounting matters in the Public Service Commission?
A. Yes.
Q. How long have you been so employed?
A. Twenty-five years.
Q. Have you prepared an exhibit to present in this case?
A. Yes, I have.

Exam. Witters: This will be No. 76 for identification.

(Respondents' Exhibit No. 76, Witness Thaim, marked for identification)

Q. Would you proceed to identify this exhibit that you have prepared?
A. The exhibit relates to the Bamberger Railroad Company, and has been prepared to indicate the rate of return earned by that company in the year 1953. I believe it is largely self-explanatory, I might run through it briefly.
The first set of figures show investment in transportation property as reflected by the Company's balance sheet, less the reserve for depreciation that is at the beginning of the year and the end of the year, from which I have derived an average for the year. The next set of figures cover the materials and supplies as shown by the Company's balance sheet, both at the beginning of the year and the end of the year, with an average for the year. I have then

[fol. 508] included an allowance for cash working capital, representing one-eight of the total operating expenses for the year, exclusive of depreciation expense.

The three figures referred to add up to $841,492.00, which I have leveled as the rate base. The Company's income statement shows an operating income of $134,491.00.

By Exam. Witters:

Q. Is that net railway operating income?

A. Yes, sir.

By Mr. Rampton:

Q. It is after Federal Income Tax?

A. It is after taxes.

Q. Yes.

A. Relating the railway operating income to the rate base figure produces a rate of return of 15.98 percent.

By Mr. Solum:

Q. And the source of your information is what?

A. The annual report of the Bamberger Railroad Company for 1953.

Q. Is that on file with the Commission?

A. It is.

Q. Is the Bamberger Railroad an intrastate railroad?

A. Well the road of Bamberger Railroad lies wholly within the State of Utah, between Salt Lake City and Ogden.

Q. Why did you select the Bamberger Railroad for this exhibit?

A. There are two reasons, one is that it is wholly within the state, and the second that it handles commodities of all descriptions, that is, it is a general commodity carrier.

[fol. 509] Q. Do they have an average revenue of over one million dollars a year?

A. They have had for the past several years.

Q. Did you hear the testimony of Mr. Balser?

A. I did.

Q. And did he state at that time that their locomotive power was diesel?

A. That is as I understood him, yes.

Mr. Sohm: That is all.
We offer in evidence Exhibit No. 76.
Mr. Fitzpatrick: No objection.
Exam. Witters: Received in evidence.

(Respondents' Exhibit No. 76, Witness Thaim, received in evidence)

Cross examination.

By Mr. Fitzpatrick:

Q. Mr. Thaim, what is the purpose of Exhibit No. 76?
A. Just what it shows, to show what kind of a return the railroad earned that year, the Bamberger Railroad.
Q. Is it your position that because the Bamberger is making 15.98 percent on the rate base, that it should be denied the increase and the other railroad that is returning around 3 percent should be allowed the increase?

Mr. Rampton: I object to that question of this witness, he is not taking any position, counsel will take the position, [fol. 510] he is just stating facts and the cross examination is outside the scope of the direct.
Mr. Fitzpatrick: I will reframe the question.

Q. Mr. Thaim, is it your opinion, as accountant, that because the Bamberger is making 15.98 percent return, it should be denied the increase in this proceeding, whereas, the other railroads in Utah, which average something around 3½ percent, should be allowed the increase?
A. Frankly, I haven't give the question any thought. I wouldn't have any opinion on that question.

Mr. Sohm: I object to the question because it is not established that the other railroads are getting somewhere around 3.2 rate of return.
Mr. Fitzpatrick: 3.5 I think.
Mr. Sohm: 3.5.
Mr. Fitzpatrick: Mr. Rampton, I believe developed that last——
Mr. Rampton: 3.82 percent.

Q. Now then, how did you happen to pick the Bamberger

in Utah, when you have other strictly intrastate railroads in Utah?

A. Well, take the Utah Railway Company, it is pretty much a one commodity road. There is the Salt Lake-Garfield and Western, a short line railroad, their business isn't very big I think, less than $300,000.00 a year, their business is all passenger, and most of the stuff they haul is either to [fol. 511] or from the salt plants, if I am correctly informed, so they don't get much of a variety of commodities that the Bamberger does in their transportation.

Q. Now then the Bamberger Railroad secures its revenue from a substantial movement of interstate traffic, doesn't it?

A. I think that is true. Shall I refer to the report?

Q. Yes, go ahead.

A. The report for 1953 indicates that they had 95,986 tons of revenue freight which originated on their own road, and they received from connecting carriers 245,773 tons. Of course I don't know what part of that 245,000 was interstate in character. That is from a report you can't tell what part is intrastate strictly, and what part is interstate.

Q. Well if you had taken a Utah railroad, which I believe is solely within the State of Utah, and has a return of .97 you would have had an entirely different picture, wouldn't you?

A. If that is what it indicates, it surely would be.

Mr. Fitzpatrick: That is all.

Cross examination.

By Mr. Miner:

Q. Mr. Thaim, when counsel referred to the fact that the Bamberger was an intrastate railroad, you mean by that in your answer that it is wholly located within the state?

A. That is what I so stated.

[fol. 512] Q. It is the only railroad that has access to Hill Field, isn't it?

A. That is my understanding.

Q. And Hill Field is about the largest air base installation in this area?

A. Probably is.

Q. Now in addition to the Hill Field traffic which they would both originate and terminate, it also has a lot of connecting traffic from the Southern Pacific at Ogden doesn't it, receives from Southern Pacific and delivers to Southern Pacific at Ogden?

A. Well I assume so, I don't that to be a fact, Mr. Miner.

Mr. Sohm: If you don't know just state so.

A. Yes.

Q. You know the fact that the Southern Pacific comes into Ogden, and that is its terminus?

A. That is right.

Q. The Union Pacific goes east from Ogden?

A. That is correct.

Q. The D. & R. G. meets the Bamberger road at Salt Lake and Ogden?

A. Yes, I think they have interconnections.

Q. And the Western Pacific has interconnection with them at Salt Lake?

A. Yes.

[fol. 513] Q. So that in addition to the Bamberger being the only railroad in and out of Hill Field, it interlines with all of the other railroads that are involved, listed here as Class 1 railroads?

A. I would think that would be true, yes.

Q. And as you have already stated its report shows only 95 possibly 96 thousand tons originated or terminated on its own line, whereas 245 nearly 246 thousand tons which it received or delivered?

A. I think you misstated that, that number of tons originated on the line only.

Q. Originated 95,000?

A. Yes, not terminated, just originated.

Q. And the 245 or nearly 246 thousand tons was received by it?

A. That is right, that is what the report shows.

Q. So your report only shows the termination traffic on that figure?

A. Yes. Well, of course I don't whether all of that ter-

minated on the Bamberger, it might have gone beyond, I don't know.

Q. But it was received by Bamberger.

A. At least they handled part of the movement.

Mr. Miner: That is all.

Redirect examination.

By Mr. Sohm:

Q. Is there any other road that is entirely intrastate in [fol. 514] Utah, which would be as nearly representative of the Union Pacific and Southern Pacific and the Western Pacific as the Bamberger Railroad?

Mr. Fitzpatrick: Objected to. I don't think this witness is qualified to state whether this railroad or the Bamberger is representative of the Union Pacific, Western Pacific——

Mr. Sohm: Representative in the way of the produce they haul.

Mr. Miner: Now just a moment, he has testified that they haul general commodities, and I think beyond that it would be a conclusion of this witness, without any proper qualifications otherwise.

Mr. Sohm: I submit it.

Exam. Witters: Please read the question.

(Question repeated by Reporter)

Exam. Witters: He may answer the question.

A. Well I am not too familiar with what all these railroads do and what they haul, although I do know generally that the larger roads haul anything that they can get, and I think Bamberger does. Some of these other roads such as the Utah Coal, have a coal route, I think their major commodity is coal. He mentioned about the Salt Lake-Garfield and Western, it is of course partly a passenger line, beyond that I guess the only one left is the Carbon County Railway, which I understand is classified as a switching line, not a line haul carrier.

[fol. 515] Q. Is there any other wholly intrastate railroad which hauls as their major movement, general commodities?

A. Mr. Fitzpatrick: Will you reframe the question, Mr. Sohm. It has been developed here that it hauls a very substantial amount of interstate traffic, it is not an intrastate railroad in the sense that it handles only intrastate traffic.

Mr. Sohm: I will reframe the question.

Q. Is there any railroad whose actual authority is wholly intrastate, which hauls——

Mr. Miner: I object to the question as it has been stated so far, because there is no possibility that it can include only authority wholly intrastate, and I think what our counsel means is that it is located wholly within the state.

Mr. Sohm: I will reframe the question.

Q. Is there any railroad line, whose tracks are wholly within the State of Utah, that hauls general commodities as their main basic haul?

Mr. Miner: I think he has already testified that the Salt Lake, Garfield and Western does, but it hasn't as much business as the Bamberger does

Mr. Sohm: I submit the question.

Exam. Witters: He may answer.

A. I though I had already answered that kind of a question.

Exam. Witters: I think you have too.

A. Do you want me to answer it?

[fol. 516] Mr. Sohm: Yes.

A. I think I have mentioned that there are three or four railroads in this state whose lines of road lies wholly within the state. The Utah Coal Route, which as we all know, their major movement is coal. The Salt Lake, Garfield and Western, handles some passenger traffic and also moves stuff to and from the salt plant out here near Saltair, that is their major freight movement if I am correctly informed. Beyond that there is the Carbon County Railway to which I referred a few minutes ago, and as I stated I understand that that has been classified as a switching road, rather than a line haul carrier. But there again I think the majority

of their movement is to and from the smelter, that is, products for the smelter and products produced at the smelter going out. Does that answer the question?

Q. That is all right.

That is all I have.

Mr. Fitzpatrick: Nothing further.

Exam. Witters: You are excused.

(Witness excused)

Exam. Witters: Call your next witness.

MILES P. ROMNEY was sworn and testified as follows:

Direct examination.

Mr. Romney: My name is Miles P. Romney. I am Man- [fol. 517] ager of the Utah Mining Association, officed at #918 Kearns Building, Salt Lake City, a position I have held since January 1, 1952. Prior to that time I was employed for fourteen years as an exploration geologist, and for some five years as a mine operator. My range of mining experience has been from mucker to superintendent of operations.

I appear before this Commission today as a representative of the Utah Mining Association, in opposition to granting the railroads the right to make effective the increases in freight rates and charges on ores, concentrates and related products, in the State of Utah, equal to and corresponding with the increases authorized by the Interstate Commerce Commission in its various reports and orders now in effect, as issued in Ex Parte 175.

The question of paramount significance in this case, insofar as the mining industry is concerned, is whether or not certain important segments of that industry are of sufficient importance in the economy of the community, and as an originating source of freight tonnage to justify their survival.

Studies of lead-zinc mining in particular have shown that the industry is slowly being strangled, and I wish to insert this phrase, in the only real competition the miner of non-

ferrous ore now faces, or that between depressed prices and increased constant production, of which freight costs on [fol. 518] ores, concentrates and metals, are no small portion.

The present state of distress in which the lead-zinc mines find themselves has been accelerated and emphasized by excessive imports from foreign countries in 1949 and 1950, and again in 1952 and 1953, but the symptoms of poor operating health have long been present as following data will show.

Conditions under which the underground non-ferrous mines of Utah, as well as elsewhere in the Nation, have been operating for the past twenty years, have been increasingly adverse. The effect of these adverse conditions is apparent in many ways. They are reflected in decreasing production, employment, operating profit and in the efforts being made to find new ore bodies to replace those being mined out.

The latter, or exploration work in the search for new ore, is of particular significance. Without a normal amount of such work there will be no new mines to support the economic structures dependent on present mining operations. In adverse economic circumstances the high risk exploration expenditures are among the first to be eliminated.

These conditions result from the combination of increases in supply costs, labor costs, ore treatment costs, transportation costs, and an international marketing situation over which mine operators have no control.

Transportation costs are but one feature, although they are prominent in every move from mine to mill, to smelter, [fol. 519] to refinery and to market.

A shipment of lead-zinc milling ore, selected at random from settlement sheets, showed a gross mill value to the mine of $19.41 per ton.

I would like to explain that figure, that is before the freight haul from the mine to the mill. The actual payment to the shipper in that case was $17.59, if you would like to insert that figure.

The total freight cost to the shipper of hauling the ore from mine to mill, zinc concentrate to a zinc smelter in Montana, zinc smelter to St. Louis and lead bullion to New

York, was $5.12 per ton of the crude ore. Thus the freight charges equaled one-fourth of the gross mill value of the ore.

We protest the increase in Utah intrastate freight rates on ores, concentrates, and related products, subject of discussion in this case, for the simple reason that the increase will but add to the burdens at present being borne by the industry and will serve to further restrict production, employment, profits and exploration. Such increases will serve to decrease the freight revenue from mines rather than to increase it.

We are aware that much of the concentrate and all of the metal traffic from Utah and in the western states is interstate in movement and now bears the increase imposed by Ex Parte 175, but call attention to the fact that any present [fol. 520] or future ore production lost through intrastate application of Ex Parte 175, will also eliminate the interstate movement of concentrates and metals.

We would like to present as clear and as accurate a picture as possible of present economic conditions affecting and/or related to mining in the State of Utah.

Over the greater part of the past twenty-three years, the underground metal mines have been operated under conditions which were generally adverse to balanced, or well-rounded programs. By balanced, is meant full cycle operations, including the prospecting, exploration and long range development necessary to currently replace the reserves being mined out. To illustrate, Utah has mined about five million tons of lead, but the mines have never had over two or three years of proven minable reserves at any one time.

A full cycle of mining operation is necessary to maintain ample reserves for future mining. The prospecting, exploration and long range development phases of the mining cycle, all involving high cost and varying elements of risk in the expenditures made, suffer most when economics are adverse in mining. Such as been the general experience, with brief periods of exception, over the past twenty-three years.

During the depression years most of the mines, because of the reduced demand for metals, low prices and low earn-

ings, were forced to mine higher grade portions of their [fol. 521] ore reserves and to discontinue or seriously restrict normal exploration and long range development projects. Thus not only were ores reserves not being replaced as rapidly as they were being mined, but much material that would have been mined as ore was left in the ground. A portion of it was left in abandoned workings and even its future potential economic recovery was lost.

In spite of being caught at the beginning of World War II with greatly depleted reserves, the mines made a very creditable production record, particularly in the years 1939 to 1943, inclusive. They were then practically exhausted so far as available reserves were concerned, as is demonstrated by production in 1944-45 and 46.

Lead-zinc mines in Utah in 1946 at the end of World War II were generally in poor condition considering both ore and financial reserves. Manpower shortage and production pressure during the war had further restricted development of immediate ore reserves and exploration for future reserves. Price control, high taxation of profits, inflated costs and difficulty of obtaining capital equipment had prevented accumulation of financial reserves and caused deterioration of plants. "High grading" of known ore reserves had been forced through this lack of manpower, inadequate prices under price controls for the major portion of the metals produced, and rapidly shrinking reserves under the impact [fol. 522] of high metal demand during the war emergency.

Free prices beginning at the end of 1946, better manpower conditions and improved equipment availability permitted a gradual improvement of conditions up to the first foreign metal dumping period of 1949-50. 1946 to 1949 was a period of rapid convalescence, far short of complete cure, but was demonstrating the real potential of the industry under favorable conditions.

The first dumping period of 1949-50 effectively cut down employment, production and earnings. The 1951 and early portion of 1952 scarcity period permitted a partial recovery, but present conditions beginning early in 1952 have returned production and earnings to near 1946 levels. Operating outlook is now worse than 1946, for then the hope of return to normal conditions was bright.

Production. For the record I will read only the averages here with a brief comment.

In the war demand period the average tonnage from the underground metal mines of the State of Utah was a million and one-half tons.

There was produced as average yearly tonnages 70,000 tons of lead and 42,500 tons of zinc.

By Mr. Sohm:

Q. May I interrupt just a minute, Is it your intention to have all this copied into the record and just read this now?

[fol. 523] A. I would appreciate for the sake of brevity if this could be copied into the record and just these averages given.

Exam. Witters: It is in your exhibit, but if the parties are willing we will put it in.

A. If that is agreeable to everyone we will shorten it up that way.

Near the end of the war period, when the mines were exhausted the tonnage dropped to 923,000 tons as an average for the three years, 44 to 46, the tonnage of lead dropped to an average of slightly plus 41,000 tons, and average of zinc dropped to an average of 33,000 tons.

In '47, '48 and '49, when we were freed from price controls, the equipment was available, manpower was available, 986,000 tons plus was the average mine production of those three years, with practically 53,000 fons of lead and 42,000 tons of zinc.

1950 saw disaster returning in the form of competition from foreign sources beyond our control, tonnage dropped in all categories as you can see.

In the Korean scarcity price gave us some stimulous and there was some recovery. I refer to the figures now of 1953 where we have dropped down to a figure of 730,000 tons which is estimate on the basis of the first half of year's known production, which is half of the period at the beginning of the war, in terms of mine tonnage, with lead

[fol. 524] tonnage down to 40,000 tons and zinc tonnage down to 27,700 tons.

(Reporter's Note: The following tabulation is inserted in accordance with understanding as above indicated)

PRODUCTION

Year	Tons Lead-Zinc		Tons Recovered Lead		Tons Recovered Zinc	
			(War Demand)			
1939	1,493,097)	Average	67,634)	Average	34,526)	Average
1940	1,642,871)		75,688		43,788	
1941	1,520,481)	1,535,203	69,601)	70,025	42,045)	42,560
1942	1,478,380)		71,930)		45,543)	
1943	1,541,184)		65,257)		46,896)	
			(Reserve Exhaustion—Tight Manpower and Equipment—Ceiling Metal Prices)			
1944	1,172,592)		52,519)		38,994)	
1945	896,654)	923,641	40,817)	41,349	33,630)	33,039
1946	701,766)		30,711)		28,292)	
			(Normal Recovery)			
1947	1,012,393)		49,698)		43,673)	
1948	995,553)	986,447	55,950)	52,892	41,490)	41,944
1949	951,394)		53,027)		40,670)	
			(First Foreign Dumping Period)			
1950	817,801		44,753		31,678	
			(Korean Scarcity)			
1951	825,795		50,451.		34,317	
			(Second Dumping Period)			
1952	796,592		50,210		32,947	
1953	730,000*		40,000		27,700	

* Estimated on basis 1st 6 months of 1953.

[fol. 525] In 1951 ten of the eleven western states produce a total of 9,962,363 tons of ore from lead-zinc operations. Approximately 1,250,000 tons of concentrates and 628,588 tons of metal were produced from this ore. The railroads benefited in every step, from mine to mill to smelter to refinery to market. They benefited further in the back haul directly and indirectly related to this production.

In 1953 the total of metal produced had decreased to 482,210 tons, a drop of 23 percent. It is logical that there was a parallel decrease in concentrates and crude ore tonnages, although those figures are not yet available.

The decreased mine production under the critically adverse economic circumstances of the past two years resulted principally from the shutting down of most of the small mines. They were unable to absorb any financial loss, and therefore closed down almost immediately after adverse conditions developed.

Many of the larger mines have continued to operate with near normal production rather than to close and bear maintenance and shutdown costs in the hope that there would be a near future change of existing conditions.

However, there is a limit to the length of time that loss operations can be sustained. The increase in cost of mining incident to Ex Parte 175 is but an additional burden in an already most difficult situation.

[fol. 526] Number of Operating Lead-Zinc Mines in Utah.

I will refer to that just briefly, it can all be copied into the record.

In 1948, the period when we were back to normal recovery after the war, there were seventy-four mines operating in the State of Utah, that was decreased to fifty-two in the year 1950, when we had the impact of foreign dumping, and failed to recover in 1952 when conditions were slightly better and for the full year of 1953 it amounts to twelve mines, eight of which were small.

(Reporter's Note: The following tabulation is inserted in accordance with understanding as above indicated)

		Tons of Ore		
Year	Total	Small 1-1000 tons	Medium 1000-10,000 tons	Large Above 10,000 tons
1946	46	31	7	8
1948	74	56	12	6
1950	52	40	7	5
1952	31	22	3	6
1953	12	8	0	4

(Data from custom ore mills and smelters of Utah)

The eight small mines have shipped, in total, not more than 1,000 tons of ore.

Of the four large mines operating;

One has drastically curtailed in the past few months;

Another must pump a large quantity of water from the [fol. 527] mine, costing directly about $25,000.00 per month, and therefore has no alternative between continued operation or complete abandonment;

Another has closed down certain sizeable and promising exploration and development projects in areas removed from the producing mines, has curtailed the work week, and further has the problem of maintenance of a large custom mill and lead smelter;

The fourth has maintained near normal production and employment, at no better than break-even return, by virtue of a high proportion of gold and silver in its ore.

Each of these operations, as well as the two larger mines closed in 1952, are located in the center of highly mineralized areas. They normally develop new ore reserves and explore for future reserves concurrently with production.

Injury being sustained by Utah's lead-zinc mining industry in the discontinuance of exploration far transcends the question of continued development. That injury cuts its life expectancy to the short period it can exist on present known reserves, with attendant jeopardy to local economy and national security.

Earning Position of Lead-Zinc Mines of Utah

Utah metal mines are required to furnish the State of Utah, over affidavit, their income and operating cost data for property tax purposes. The standard report form is [fol. 528] called "Statement of Mine Valuation". Plant and capital equipment expenditures are reported currently but expenses such as the following are specifically excluded from deductions chargeable against income.

1. Salaries of corporate officers.
2. Cost of building or operating boarding, bunk and mess houses, or dwellings.
3. Property purchased payments or royalty payments.
4. Legal expenses and interest.

5. Depletion credits.
6. Insurance other than Workmens' Compensation.
7. Direct Federal Taxes (Income, Social Security, etc.).

In 1948 the "Difference" on 19.6 million dollars of "Net Smelter" return was 3.7 million dollars, or 18.9 percent of the "Net Smelter". In 1950 the "Difference" on 11.1 million of "Net Smelter" was minus $50,000.00. In 1951 the "Difference" on 17.2 million "Net Smelter" was 3.0 million or 17 percent of the "Net Smelter".

1953 reports to the State are not yet available but operating companies were asked to prepare a statement of valuation forms for first half operations. Ninety-five percent of Utah lead-zinc production was represented in the returns received. Those reports showed the "Difference" on 5.3 million "Net Smelter" to be minus $338,502.00.

Seven and one-half years of operation of the above 95 [fol. 529] percent shows the total "Difference" on 103.5 million "Net Smelter" was 9.9 million or 9.5 percent of the "Net Smelter".

Depletion credits of 15 percent of the gross, more than off-set the 9.5 percent overall net credit shown on the basis of the Tax Commission records.

Tangible evidence of loss operations is the fact that the United States Smelting Refining and Mining Company, whose principal operations are at Lark and Bingham, Utah, lost nearly $900,000.00 in 1953, according to their annual report.

I will skip the next two paragraphs.

In contrast to the above discussed earning position of Utah's underground non-ferrous mines, the four western Class 1 railroads present a profitable operating picture Their gross revenue and net income for 1953 is reported as follows:

Total Operating Revenue

D&RGW	WP	UP	SP
$84,701,140	$59,244,506	$530,024,30	$546,126,794

Net Income

10,208,814	7,733,446	70,430,213	47,552,711

If I may be excused for diverging for a moment before concluding this statement, I would like to state that in the opinion of most mining men, camps like Park City, Eureka, Bingham, Alta, Milford and others, would produce as much metal in future years as they have in the past, if stability in operating conditions and proper incentive for explora-
[fol. 530] tion were provided.

In conclusion we simply wish to re-emphasize the points that;

Underground metal mining has operated under generally adverse conditions for the past twenty-three years;

The adverse conditions have forced high grading of ore reserves and occasioned the leaving of much material which might have been mined in the ground.

Prospecting, exploration and long range development program, the high cost, high risk phases of mining, so vitally necessary to finding new sources of ore, have been seriously curtailed.

The decreasing scale of ore and metal production is largely attributable to the adverse conditions under which operations have been sustained, rather than due to exhaustion of our potential or prospective ore reserves as claimed by many uninformed pessimists.

Cost of operation, of which the aggregate freight charges on ore, concentrates, bullion, and metal, constitute a prominent portion and present seriously depressed prices over the past two years, have combined to close the small and to seriously threaten continued operation of the large ones, meaning mines.

Any addition in cost will but serve to accentuate the general adverse conditions and render the present critical
[fol. 531] question of continued operation more acute.

Revenue gain on such shipments as will be made by applying Ex Parte 175 increases of 15 percent to intrastate hauls, will most likely be more than canceled out by reduced intrastate ore hauls and attendant interstate hauls of concentrates and metals. Further freight losses can be expected on loss of direct and indirect business based on the supplies used by the mines and the general economic activity related to mining.

We oppose the imposition of Ex Parte 175 on intrastate

rates and charges on ores, concentrates and related products, with the firm opinion that the additional burden will both harm the mines and reduce the revenue of the railroads.

That is all of my statement, gentlemen.

Cross examination.

By Mr. Fitzpatrick:

Q. Mr. Romney, the people you are appearing for are those that produce the non-ferrous ores, is that right?

A. Yes.

Q. And what is that largely, lead and zinc?

A. It is as represented in this presentation here, it consists almost entirely of lead and zinc and the attendant by-product production which would involve considerable gold and silver, but it is the product of the lead and zinc mines that I am referring to.

[fol. 532] Q. And is it in value and commoditywise somewhat similar to the interstate shipments shown on Page 2 and 3 of Witness Earley's Exhibit 53?

A. I would have no particular reason to disagree, but could not substantiate these without fully checking it, I find no reason to disagree with it, so far as that is concerned.

Q. Well I mean it is the same type of metal?

A. It is the same type of metal. This Winnemucca, Nevada, to Kalunite, that would be uranium ore, and Clancy, Montana, would be uranium ore, East Ely to Midvale would be involved with copper production, Battle Mountain, Nevada, would be involved with copper production. These others down here, related to Geneva, would all be related to iron and steel, they would be related to steel production, so that I would say the minor portion of this is related to lead——

Q. Is that the kind of concentrates or ores that you ship intrastate?

A. Yes. If I may make one statement there, most of the lead concentrate is intrastate, there would be considerable zinc concentrate which would be interstate.

Q. These particular shipments that are referred to in Mr. Earley's exhibit would be moving interstate——

A. They would be typical of the movement, yes, in interstate.

Q. They would be somewhat typical of the movement intrastate?

A. Yes.

[fol. 533] Mr. Fitzpatrick: That is all.

Cross examination.

By Mr. Miner:

Q. You mentioned that adverse economic conditions in the past two years has caused the shutting down of the mines—the small mines, what are some of the large mines, and their point of location, that are still operating?

A. Well, actually the present mines that might be classed in the larger categories in the state are the operations of the United States Smelting and Refining Company at Bingham,——

Q. Well——

A. May I finish?

Q. I want to point one right there. When you refer to Bingham you are not including the copper——

A. I am not referring to the copper.

Q. There is a separate mine owned by the U. S. Smelter and Refining that is a lead mine in that area?

A. It is a lead and zinc mine, typical zinc operation.

The Chief Consolidated Mine at Eureka, Utah, is operating, The Newport Mine at the station there at Keithly, Utah, in the Park City District, is operating, the Combined Metals Reduction Company aren't in proper terms of operation, still in operation, they are doing some maintenance in keeping the mine open, and doing a minor amount of development and repairs, it isn't making any substantial production.

Q. Now what is the situation at Park City, the main [fol. 534] mines at Park City are closed, aren't they?

A. The Silver King and the Utah-Consolidated, closed June of 1952.

Q. And that of course was prior to any imposition of the Ex Parte 168 increases, intrastate in Utah?

A. Yes.

Q. As a matter of fact, prior to the time, they were having difficulty there, the Union Pacific which served Park City had considerably reduced their rates going around by Coalville and Ogden, in order to meet truck competition some years ago, isn't that true?

A. I am not familiar with that situation.

Q. But at any rate the closing down there was prior to these increases being imposed as a result of the action of the Interstate Commerce Commission?

A. Yes.

Q. They became effective May 1st of 1953?

A. Yes.

Q. Now with respect to Eureka, in the Eureka area there is Eureka, Mamoth and Silver City?

A. In the group.

Q. All in the group there, a branch serving each from the Union Pacific?

A. I didn't know that, but I knew they were all served by the Union Pacific.

[fol. 535] Q. And they are of course involved in your Association and the products that they produce, do include some of this lead and zinc that you are concerned with?

A. Yes, principally the Chief Consolidated, I doubt if there is any movement from Mamoth and Silver City to the lead zinc operations, that goes as flexing ore to Garfield.

Q. Are you familiar with the fact that some few years ago special rates were made from Eureka in order to move some low grade material there that came from reworking some of the dumps?

A. I am not familiar with those specific rates, I have heard such situations mentioned, yes.

Q. A lot of this economic condition that speak of has come in spite of conditions with freight rates and prior to the increases that you say were imposed by us here?

A. To a minor extent that might be true. In regard to Park City, I would like to make this comment, that the economic circumstances which I related in here were the

major deterring factors in Park City considering reopening. They went down on strike just to clear the record, and then found that by the time they were able to reach an agreement with their labor up there that economic conditions were such, despite the rates that you speak of there, that all economic factors combined were such that they could not open, and they still continue to be in that position.

[fol. 536] Q. And they were the one, are they not, where they got to the position where they had to even let some of the lower levels go, they can't maintain it?

A. Well I didn't speak of that, but that is the case, that they have had to allow water to flood some of the lower workings.

Q. Now you mentioned that one of the large ones has closed down certain sizeable prospecting exploration and development, but has had to keep going because of the maintenance of the large mill and plant, that is the U. S. Smelter at Midvale?

A. That is right.

Q. And they own their own mines not far from Bingham?

A. That is right.

Q. They are served by the Rio Grande, and the haul on the Rio Grande is from the north of Bingham area to——

A. What they call the lead mine.

Q. Now except for the areas which you have mentioned, in response to my question, in your direct testimony you mentioned Alta. There is not now and has not been for a long time any rail service to Alta, isn't that true?

A. Yes, that is very true. If I may put my point in there, I mentioned all of these camps for the simple reason that we feel that if economic conditions were more conducive that it would be—we could expect tremendously increased production from all of those areas which would re-

[fol. 537] sult in our benefit and your benefit and the general public benefit.

Q. Yes, but I want to point out that Alta, while there may be ore bodies there that show a reserve that could be worked, there is no railroad to it and what ore has been produced in recent years has been brought in by truck?

A. I think that is generally true, yes.

Q. Now Milford itself is not an area of any large mining, but is an area where there has been considerable prospecting, and there are small mines in the area, isn't that true?

A. There is one large mine in the area which in the early days had a major production.

Q. That is the Frisco Mine?

A. No. I am speaking of the Horn-Silver Mine. And during the war period they produced some very substantial tonnage. I happen to know that mine intimately having examined it a number of times, and there is a very large potential of low grade tonnage in the mine.

Q. But recently there has been very little activity with respect to that?

A. Well, when you say that, I think they closed down a little over a year ago, and the operating company had expended pretty close to a million dollars to build mills and facilities that are there to take care of their anticipated operating program. Then with our unfortunate running into foreign competition they were undermined and had to [fol. 538] abandon it, they still retain their rights and their equipment.

Q. How far is that from Milford?

A. Well the mill is about four miles and the mine is about sixteen or seventeen miles westerly from Milford.

Q. And Milford is on the Union Pacific?

A. Yes.

Q. They truck it in to the railroad at——

A. The concentrates are trucked into Milford yes, for shipment.

Q. The Frisco Mine which at one time was a big one has long since been completely abandoned?

A. Yes.

Q. I think the only other one you mentioned was the Keithly area, when you speak of Keithly that is in the Park City area?

A. Yes, it is considered in the east Park City district, yes, it happens to be the station name and the post office.

Mr. Miner: I think that is all.

Exam. Witters: Next witness.

Mr. Sohm: I have one question.
Exam. Witters: Very well.

Redirect examination.

By Mr. Sohm:

Q. Did you hear the examination of the Utah witness, Mr. Crandall, in connection with transit privileges, previously today?

Mr. Fitzpatrick: I this proceeding?
Mr. Sohm: In this proceeding, yes.

[fol. 539] A. He was on yesterday, yes, I heard Mr. Crandall, or was he on this morning, I heard him, yes.

Q. Do the products of mines enjoy any transit privileges?

A. Well would you explain to me the full meaning of transit privileges.

Mr. Miner: I think unless the witness knows why he——
Mr. Sohm: Well if the witness does not know——
The Witness: I just want to be perfectly clear what he means, I understand the movement and the billing of ores and concentrates and metals, but I——

Q. May a movement of ore terminate at least, and stop at a spot and stay there for days and then go on without any extra charges?

A. In other words, under original billing they could stop in transit for treatment and resume the movement under the original billing?

Q. Yes.

A. To my knowledge there is no such arrangement on ores—non-ferrous ores and concentrates in the State of Utah.

Q. But you can't make that statement regarding products of mines generally, or do you know?

A. I wouldn't know outside of the non-ferrous deal, but in the non-ferrous field to my knowledge there are no intransit privileges. Each handler, in other words, a mine is billed for the ore to the mill or to the smelter, to which-[fol. 540] ever he ships, he pays that bill, and then the miller or the smelter would pay the bill on the next move-

ment, and the next handler would pay the bill on the next movement, there is no intransit provision there. The thing in relation to that that I would like to point out is that generally the ore haul is the shortest haul, and that is usually the intrastate haul. The longer haul is usually on the concentrates and the metals which are in interstate.

Mr. Solum: Thank you.

By Mr. Miner:

Q. There is one question there. Are you acquainted with the fact that there is a privilege of sampling in transit?

A. Yes, that is true, yes.

Q. For instance a car may come into Midvale and be sampled and find out it has a high percentage of copper after sampling, and then they move that on to Garfield to the U. S. plant?

A. I wouldn't—I couldn't verify that, in fact, I do know that—in fact I have made such arrangements for a shipper to ship to say the Utah Ore Sampling Plant, and have it sampled in transit, it would be consigned to either International or Midvale and would really be sampled in transit, yes. That isn't a treatment it is an inspection process.

Q. And the Utah ore sampling at the south end of Murray, that is an exclusive business?

A. Yes, that is my understanding, yes.

[fol. 541] Mr. Miner: That is all I have.

Exam. Witters: That is all, you may be excused.

(Witness excused)

Exam. Witters: Mr. Taylor?

Mr. Rampton: It may be necessary for me to leave before he gets through, are we to be permitted to submit briefs on this matter?

Mr. Fitzpatrick: Respondents are willing to waive briefs and rest on a proposed report.

Mr. Rampton: I think we would prefer to submit briefs, and if the Examiner would fix the time today.

Exam. Witters: I can do that, what time do you want?

Mr. Fitzpatrick: One of the things, I wonder if the Re-

porter could tell us about when we could have this transcript?

Exam. Witters: Off the record.

(Discussion off the record)

Exam. Witters: This will be a proposed report case. Will July 12th be agreeable as a date for briefs?

Mr. Fitzpatrick: That will be agreeable.

Mr. Sohm: Okey.

Mr. Rampton: That will be satisfactory with us.

Exam. Witters: Very well then, briefs will be due July 12th.

Exam. Witters: Call your next witness. Mr. Taylor, do you wish to appear at this time?

Mr. Taylor: Yes.

[fol. 542] T. C. Taylor was sworn and testified as follows:

Direct examination.

Mr. Taylor: My name is T. C. Taylor, and my address is 507 Denver National Building, Denver 2, Colorado.

I am, and have been for thirteen years past, General Traffic Manager for Ideal Cement Company, Denver, Colorado, protestant herein, whose Union Division cement mill is located at Devil's Slide, Utah, a local station on the Union Pacific Rail Road Company, thirty-two miles east of Ogden, Utah.

I have been enrolled as an I.C.C. practitioner since August 19, 1929. My cement industry traffic work began in May, 1923. Prior thereto I had twenty-two years railroad freight traffic experience, principally with three major lines serving Louisiana and Texas.

I have participated in many matters before this Commission, also have appeared frequently before those of Utah and many other states. I have engaged in most all of the principal cement rate complaints in the southeast, and the west, heard by the I.C.C. following the Western Cement Rates Case Docket No. 8182, 48 I.C.C. 201, decided January 15, 1918, and as subsequently amended.

Our business in Utah is the manufacturing of Portland and Masonry cements, and in its sales and shipping in bulk or in sacks, by rail and/or motor haulage, to points in Utah [fol. 543] and other states, wherever sales therefor can be found and freight rates will permit.

We have also a cement terminal at Salt Lake City, served by the Union Pacific Railroad Company, to which cement in sacks, carloads, is shipped from Devil's Slide, Utah, by rail, at the present rate of six cents a hundred pounds, minimum weight 100,000 pounds. All this cement is sold and moved from such terminal by motor haulage only, to Salt Lake City and other places of consumption in Utah and other states.

Our competition principally is with the other Utah cement mill at Salt Lake City; also other mills and/or shippers, principally at Inkom, Idaho; Laramie, Wyoming; various mills in central and southern California; and other out-of-state origins not necessary to designate.

In the Western Cement Rates Case, previously referred to, rates were established in Western Trunk Line territory on an extended mileage scale basis up to 1200 miles with formulae as now shown at Page 256 of Western Trunk Lines Tariff 132-K, W. J. Prueter, Agent, I.C.C. No. A-3850, for calculating distances, etc., and different scales, known as Scale II, Scale III, Scale IV, and averages of one or more of them, were prescribed between points in such designated areas.

Basic Scale IV rates were generally 20 percent higher than Scale III which scale is generally in effect now between [fol. 544] the Mississippi River and the Colorado common point line, with various truck competition compelled scales or special rates in effect in various states. Scale IV applies to and within Montana; to New Mexico, also to Arizona with many exceptions; it is used often as a yardstick to gauge rates west of the Rocky Mountains, but has not been prescribed to or within Utah. At present there is little rule of rhyme or reason to the measure of carload cement rates in Utah.

Salt Lake City is the largest cement consuming point in Utah; Ogden is second, and then various points from Logan, Utah on the north to Cedar City, Utah on the south.

are in various positions of importance in quantities consumed.

In the I.C.C. Docket No. 30961 hearing, Utah Intrastate Freight Rates and Charges—287 I.C.C. 315, held here February 25-26-27, 1952, and decided December 1, 1952, my exhibits fifty of twelve pages, and fifty-one of eleven pages, listed all the rail-cement rates from Devil's Slide and Salt Lake City to every rail destination in the state on the Union Pacific, Denver and Rio Grande Western, Southern Pacific Co., and Western Pacific railroads and showed the distances, also the mills per ton mile and the revenue per car mile from Devil's Slide, based on an average load of fifty tons per car, which our shipments are still averaging.

They showed the chaotic and poorly adjusted or graded rates, with the numberous different minimum weights in [fol. 545] effect, ranging from 40,000 up to 100,000 pounds per car.

We will not again attempt to spell out the present rate situation, but will deal with it by representative and different destinations and areas.

(Protestants' Ex. 77 witness Taylor, marked for identification)

I have prepared accordingly a few exhibits, the first of which has been identified as No. 77, which shows the average revenue in mills a ton-mile on all traffic, received by the Class I railroads in the United States from 1940 to and including 1953, the figures for 1950, 1951, 1952 and 1953 being 13.29, 13.36, 14.30 and 14.78 mills respectively.

This exhibit is the same as No. 19 presented in P.S.C. Utah Case No. 3669, with 1953 added. The Ex Parte 168 increase of eight percent became effective September 1, 1949 on interstate traffic, and May 1, 1953 on Utah intrastate traffic. The 1953 mills figure of 14.78 represents an increase of 50.11 percent over the 1946 mill figure of 9.78.

(Protestants' Exhibit 78, witness Taylor, marked for identification)

My next exhibit, identified as No. 78, consists of two pages, and while the Utah carload cement rates are both

above and below the Western Cement rates Scale IV basis, increases to and including the X-168 increase, that scale has been used as a yardstick in making or judging cement [fol. 546] rates to and within Mountain-Pacific territory. There are of course many variations as there are in various other sections of the country; due to motor and other competition.

This exhibit shows these scale IV rates, up to 360 miles, which takes in the longest possible rail haul in Utah, or 354 miles from Devil's Slide to Uvada, where the Union Pacific Railroad crosses into Nevada.

Comparisons are made between such scale rates and the scales for like distance breaks, applying in Texas and Idaho, also within the so-called MKT 290 mile scale, voluntarily established by carriers in portions of Kansas, Missouri and Oklahoma, state and interstate to meet or defeat motor competition, which those rates seem to have accomplished pretty effectively.

Also in the comparison is the California contract truck scale, which is now moving an estimated proportion of the cement in that state of from 85 to 95 percent.

At five mile breaks to seventy-five miles the sum of the Scale IV rates is shown as 292 cents, while Texas adds to 153 cents; that is the extent of Scale III modifications in that state to meet or offset trucking; also the Idaho truck competition scale adds 148½ cents; the MKT Scale 164½ cents, and the California truck scale adds 117½ cents. Like additions are shown at 150 miles, or the extent of the Union Pacific Railroad Company's Idaho truck competition scale; at 290 miles, the extent of the MKT 60,000 pound [fol. 547] scale, and at 360 miles, the rate break which includes the longest possible Utah rail haul.

This exhibit shows by split "Ø" characters some excessive abrupt jumps or peaks in all these scales, which generally result in higher revenues for longer hauls than at directly intermediate shorter haul distances.

The exhibit reproduces No. 20 in the P.S.C. Utah Case.

(Protestants' Exhibit No. 79 Witness Taylor, marked for identification)

My next exhibit, four pages, identified as No. 79, shows

present rail cement rates, minimum 40,000 pounds, except as otherwise indicated, from Devil's Slide and Salt Lake City to various Utah points ranging in distance from five up to 354 miles, with the lowest rate revenue shown from Devil's Slide, in mills per ton mile, and per car mile based on an average load of 50 tons per car which is less than the exact average load.

Some of these figures are stupendously high, especially for the shorter hauls, for example, on Baskin, the third station on page one, distance thirteen miles, mills per ton mile 323.1 and $16.15 per car mile.

Some truck competition rates of six cents, minimum weight 100,000 pounds are shown; Salt Lake City, last entry on page one, at 68 miles appears to be the longest range of this rate, at a return of 17.6 mills, or 88 cents per car mile.

[fol. 548] Wherever two or more alternating rates and minima are shown, revenue calculations are made on the lower or lowest rate only. It will be noted that the mills per ton mile exceed the United States total average of 14.78 mills shown on my first exhibit, in practically every case, also that some are several hundred percent higher.

The exception is on the Union Pacific in the extreme southwest corner of the state, shown on page 2, in the Iron Mountain-Uvada area, where the revenue is from 13.7 to 14.1 mills, due to depressed blanketed rates of twenty-four cents, 50,000 pounds minimum, or a twenty-five cent, 100,000 pound rate at Uvada.

These depressed rates are due to cement trucked to that area from Southern California, and the fact that return loads of plaster, lumber, beans, live stock and other commodities are available.

The exhibit also shows the poor adjustment in rates, distance considered, which is more pronounced on the Denver and Rio Grande Western than elsewhere. Indeed, on pages three and four, an asterisk designates several points to which published thru rates may be defeated by using the heavy 100,000 pound six cent rate to Salt Lake City, and the Denver and Rio Grande Western published rated of lower minima beyond.

For examples, on page three our Murray rate of 19½ cent can be lowered by adding the seven cent figure to

[fol. 549] the Salt Lake City rate of six cents, making thirteen cents thru; also at Garfield our twenty-six cent figure exceeds six cents to Salt Lake City plus fourteen cents beyond. Other similar situations are obvious.

Various other inconsistencies appear; on page four the rate to Marysvale, 265 miles is thirty-seven cents, while for 228 miles to Sunnyside, it is thirty-eight cents.

This exhibit reproduces No. 21 presented in P.S.C. Utah Case No. 3669, with a few minor corrections.

We fail to understand Utah rail lines' desire to increase intrastate cement rates and charges by fifteen percent, and particularly so since the movement of cement by motor haulage is increasing at a tremendous pace.

At the I.C.C. Docket No. 30961 hearing, my four page exhibit No. 52 showed the 1951 details of trucked shipments from Devil's Slide. In that year 273,370 barrels of cement, the equivalent of 2071 cars of 132 barrels each, moved by truck to Utah rail points.

(Protestants' Exhibit No. 80 marked for identification witness Taylor)

My next exhibit here of two pages, identified as No. 80, shows the twenty-four Utah rail stations to which we shipped via rail in the first nine months of 1953, also the twenty-six rail stations to which shipments moved by truck.

It shows the truck movement for such nine months [fol. 550] amounted to 358,396 barrels, or the equivalent of 2715 carloads of 132 barrels each, on which the rail revenue, calculated at the lowest rail rate, and regardless of minima, would have been $138,733.97, or more.

The exhibit shows by an asterisk that of these twenty-six destinations, rail shipments also were made to nine of them. Lack of the asterisk means that the entire movement of cement to the other seventeen destinations was solely by truck.

We can't reveal the exact quantities shipped to each destination, however, my investigations show that the heaviest truck movements were principally to Ogden, 32 miles by rail or highway; Salt Lake City, 55 miles by highway or 68 miles by rail; also to Logan, Brigham and Provo. There is no published joint through rail rate from

Devil's Slide to Orem, Utah, a station on the Denver and Rio Grande Western, and no rail movements occurred to that point, though the truck movement there was quite substantial, and the rail revenue calculated thereon, at the available combination rail basis, would have amounted to more than $9,000.00.

This exhibit reproduces No. 22 and No. 23 presented in P.S.C. Utah Case 3669, with a few revisions.

To Salt Lake City the quantity of the truck movement in the first nine months of 1953 was practically the same as the truck movement there during the entire year of 1951, while to Ogden, the nine months movement was [fol. 551] practically double that for the year 1951.

Percentage-wise, for the nine months period on our entire Devil's Slide shipping via rail and truck, the proportions were: trucks 66.1 percent, rail 33.9 percent.

The October figures showed trucks 68.1 percent, rail 31.9 percent.

The increasing truck business indicates clearly what the outcome in I.C.C. Docket No. 30961, 287 I.C.C. 315, did to the Utah rail lines by adding eight percent to cement rates.

In my opinion a fifteen percent increase would be much worse, and end practically all intrastate rail movement.

During the twelve months past (eight months of 1953 and four months of 1954) the motor carrier movement of cement from Devil's Slide amounted to 172,510.50 barrels to Ogden, and 89,710.05 barrels to Salt Lake City, total 262,220.55 barrels, or the equivalent of 1986 carloads of 132 barrels (50,160 pounds) each, and the movement via Union Pacific Railroad Company to our Salt Lake City warehouse, for sale and distribution via truck therefrom amounted to 1082 carloads of 264 barrels (or more) each, weight 100,320 pounds each.

The X-168 increase to both Ogden and Salt Lake City was seven and a half cents, minimum weight 100,000 pounds, which so far as our warehouse business was concerned, was about to go to trucks, however the Union Pacific Rail Road exercised excellent judgment, and in order to retain our traffic, also to recapture some of the [fol. 552] business to Ogden and Salt Lake City, effective

January 12, 1954, reduced the rate to Ogden and their intermediate points to five cents; also to Salt Lake City and their intermediate points, as well as to Salt Lake City on the Bamberger Railroad Company and its intermediate points, to six cents. These rates are not to be subject to any Ex Parte increase, but are to expire with December 31, 1954, unless sooner cancelled, changed or extended.

At present, the rail movement to the destinations in question seems to be on the increase. Certainly the reduction to Salt Lake City has kept our shipments to the warehouse there on the rails.

Excluding rail shipments to our warehouse, I have determined that the shipping percentages from the Devil's Slide mill during the past 12 months was, percentage-wise of the balance of our shipments——

Via truck	68.83 percent.
Via rail	31.17 percent.

The cement trucked to interstate destinations (18 in all, in Colorado, Idaho, Nevada, Oregon and Wyoming) was but 4.64 percent of the plant total truck movement, with the entire balance going to thirty-six Utah points.

I have shown that the Utah cement rates are already higher than proper, in comparison with rates for like distances in the other states, and even in comparison with [fol. 553] Scale IV, in the case of Columbia, Garfield, Green River and Lead Mine. The poor adjustment in Utah cement rates is clearly brought out.

The minimum weight, where not designated, is 40,000 pounds; those higher are indicated.

However the rail answer to truck competition certainly is reduced rates, and not reductions with higher minima.

Trucks can't handle the higher minima, but they do afford more flexible deliveries, and direct to the job handling, which rail lines can seldom perform.

Mr. Fitzpatrick: Would you mind hesitating there just a moment, Mr. Taylor?

Mr. Taylor: I beg your pardon?

Mr. Fitzpatrick: Would you mind hesitating there.

Mr. Taylor: Sure.

Mr. Fitzpatrick: Mr. Examiner, I am going to object

to the next seven lines, dealing with a report, circulated by the National Industrial Traffic League, because that is not an official document or in any way so entitled. It also refers to an exhibit, which Mr. Taylor proposes to introduce, to which I would object.

Mr. Taylor: Mr. Examiner, I am not surprised of course, that the carriers are embarrassed at hearing the truth.

The National Industrial Traffic League is a well known organization, of which we are a member. It is one of the sources—is one of the main two sources. The Traffic World being the other, in which we can get any general [fol. 554] information. We do not have the benefit of the rail records, etc. We are not in the trucking business, we don't own a single truck and I can only go by——

Exam. Witters: Who is the author of this report?

Mr. Taylor: Reproduction of Item 20 of NITL, the Legislative Transportation News of May 7th, it says—the caption there is "Inter-City Tonnage Transported by Motor Carriers of 1953. The American Trucking Association has released a report——

Mr. Fitzpatrick: Just a minute. It is two or three removed even from the National Industrial Traffic League, Mr. Examiner, and I don't think that Mr. Taylor himself can vouch for the accuracy of the data.

Exam. Witters: He seems to be quoting from something else.

Mr. Taylor: Its qhoting from this reproduction of Item 20 NIT League Legislator of May 7, 1954.

Exam. Witters: I think I will have to exclude that.

Mr. Taylor: The only object in trying to put it in, was to show what they show as increased trucking and I have said—if they object to it, and you sustain it, why it is out.

Exam. Witters: I will have to sustain that objection.

Mr. Taylor: That will cut out the five lines, the last five lines on Page 10, and the first line and additional word on Page 11.

(Continuing) Our inbound materials consist of many L.C.L. lots, and a major portion of which are from Ogden [fol. 555] and Salt Lake City, most of which is trucked; the inbound intrastate carload traffic is mostly gypsum

rock from the Nephi-Juab area, and low grade iron ore or tailings from Iron Mountain or Iron Springs.

Gypsum rock is a necessary material in the manufacture of cement, its proportion being about 2 percent or about three to four cars per week.

The present rate is thirteen cents in unprotected open top equipment, and fourteen cents in closed cars.

No transit or readjustment on a manufacturing in transit basis is available, therefore this is a double haul and double revenue movement.

There are also rates of eighteen cents in open top cars or twenty cents in closed cars, from Green River.

All minimum weights are 100,000 pounds.

The iron ore movement to Devil's Slide isn't heavy; it is according to our needs in producing low heat generating cement, used principally in sizeable mass concrete pouring jobs, such as dams, etc.

However, rail witness Watson's Exhibit No. 22 in the I.C.C. Docket No. 30961 case, showed movement of 40,955 cars to five Utah points for distances of 235 to 332 miles at 7.70 mills a ton mile up to 11.02 mills.

The 332 miles and 11.02 mills applied on shipments to Devil's Slide, and the revenue was higher than on any [fol. 556] other instanced movement.

On eleven cars to Salt Lake City the distance was 264 miles and the revenue only 8.67 mills a ton mile, which shows our rates certainly should not be further increased.

The X-175 matter is not fully concluded; it stands to reason, considering the different increases finally set on different commodities in prior I.C.C. final Ex Parte reports and orders that cement, gypsum rock or iron ore rates will not be given a final increase as high as on higher grade carload traffic, such as automobiles, machinery, packinghouse products, poultry, eggs and various other commodities.

Carriers have not shown a need for the increases sought in Utah, nor that if granted, it will not continue to cause them to lose more than they are now losing, or increase their loss.

Carload cement traffic moves pretty regularly the year around in Utah. There have been but five months in the

past twelve in which our shipments have fallen below 200 cars per month.

Aside from the heavy and regular loading of cement, there is little side line expense. Track scaling of the cars isn't necessary, as we own and maintain our own track scales, and weigh all bulk cement loads, which with the sacked shipments are all under W.W. & I.B. weight agreements, and subject to their checks and verifications. [fol. 557] This non-weighing of our cement saves the Union Pacific Railroad Company some $800.00 or more per month.

I would like to stop there and indulge in a few comments about some of the information or the testimony that has been given here in this proceeding in the way of a rebuttal.

On Witness Watson's Exhibit No. 34, the enormous inequality of some of the rates shown from Devil's Slide to Utah points there, distance considered, is greatly apparent.

On page two of that exhibit, he instanced one car of cement from Houston, Texas to Salt Lake City, one from Buffington, Indiana, to Salt Lake City, and four from Navarro, Pennsylvania to Sugar House, his rates ranging from 80 cents up to 100¾ cents, plus fifteen percent in all cases.

While he did admit that those rates might indicate that it was some special brand of cement, I know, from Sales Department Reports etc., that those points do not sell in Utah the same type of cement that is manufactured in Utah at either Devil's Slide or Salt Lake City.

Further, I know that Houston, Texas, and Navarro, Pennsylvania are shipping points for White Cement, which is a premium priced cement, and does not compete with the cement manufactured and sold and shipped within Utah.

Buffington Indiana, I think the one car there is—they have made a mistake, they have billed their stuff as Keenes Cement, but it isn't a cement at all. It is a wall plaster. [fol. 558] Due to the fact that many years ago, gypsum plaster, was frequently referred to as cement plaster, for some unknown reason. Gypsum plaster is not the ordinary hard wall plaster, as we call it in the trade, it is nothing but calcite and gypsum, while the content of gypsum in

the manufacture of Portland Cements is only about two percent.

So he did not prove, in my opinion, by this page that there was any interstate movement whatever into Utah.

On page three of this exhibit, he shows some long haul shipments, one of them to Pasadena, California, 861 miles from Devil's Slide, which the Monolith representative jumped on, in his testimony yesterday.

That was during a shortage of cement in Southern California; in fact there was a shortage in Southern California, throughout the State of Arizona, and other areas, and he referred to a complaint that we had filed, I don't recall the number now, but it has only been filed requesting rates on scale IV basis, Devil's Slide to points in Southern California, among which were Los Angeles and the other groups down to the Mexican Border. And also to all points on the Sante Fe, Southern Pacific, and Apache Railroad Company in Arizona.

However, that case will never come to a hearing. The carriers have agreed to publish substantially the basis—they have informed me that the supplements are being published, the case has been put on the short procedure [fol. 559] roll, and will be withdrawn before it ever comes up for any action by the Interstate Commerce Commission.

Some of the other movements were of the same character, Wallowa, Oregon, and other points, but you will note to Idaho Falls, Idaho, the third entry on page three, 217 miles a rate of 35 cents as against the rate of 37 cents for only 185 miles to Scofield, Utah, which is on line four page one.

I now wish to go to Mr. Waldo H. Gillette's Exhibit No. 39 please.

He made the statement, his records show that no shipments have been made from Laramie, Wyoming, into Utah since 1948, and the shipments that were made in 1947 and 1948, were made because of the shortage of cement.

That is very easily explained. Prior to and including part of 1948 we had only the old cement mill at Devil's Slide, I said yesterday it began operating in 1909, I was mistaken, it began operating in 1908. It had a capacity of 700,000 barrels, there was a shortage of cement.

During 1948 we completed a brand new up to the minute cement mill there, with a million and half barrels a year capacity, and that, with the old mill gave the shipping point an outlet of 2,200,000 barrels of cement a year. There has been no more shortage in Utah, since that happened.

Now then on page three he makes a rather unwarranted statement, in my opinion, that the Laramie plant investment [fol. 560] was made in reliance on the establishment of the relationship exhisting before the Ex Parte increases. That mill went into operation, if I remember correctly, just one year after our plant at Betcher, Colorado, our plant is five miles north west of Fort Collins on the Union Pacific—that mill went into operation in 1927 or 1928, but he went into operation a year later.

Now then, back in 1928, I don't think that anyone will agree that any concern had any right to a reliance on rates that existed then. Business conditions have changed, types of cement have changed, about five or six basic cements in addition to white cement are all moving, truck competition has come into the game, so that changed business conditions would certainly make that reliance a poor judgment, or one of poor judgment.

Besides, practically all the cement rates in the United States, that have been regulated by the I.C.C. on bases prescribed by them ever since the western cement rate cases were decided in 1918 have followed and extended properly graduated mileage scale.

That scale was up to 1200 miles, which thereby gave each mill the natural advantage or disadvantage of its geographical location, it didn't make any inequality whatsoever. If you were fifty miles from a destination you paid the fifty mile rate, and if another mill was 150 miles away [fol. 561] they paid the 150 mile rate.

Mr. Gillette professed some ignorance as to the distances involved from Laramie, Wyoming, to Utah, but he accepted my word for it that it was 350 miles from Laramie to the Utah-Wyoming border, just east of Devil's Slide, and I figured yesterday that it was thirty-three miles from Ogden, Utah to the last station in Utah on the Union Pacific, I should have said thirty-three miles from Devil's Slide to the last station.

To get over to the line is approximately six or seven miles, so that distance added to 356 miles in Wyoming would make the two mills approximately 400 miles apart.

Now we go into his state of Wyoming from Devil's Slide on the same identical scale that he uses in Wyoming, we've all got the same identical increases up to and including Ex Parte 175.

It is amazing when he said he advocated the 175, because when it was established in the Utah case, before, in the 13th section case in Colorado, he had strongly urged the Wyoming Commission, and succeeded in persuading them, to hold off any of the Ex Parte increases in that state until and unless the State of Colorado put them into effect.

The reason for that was, Denver, Colorado, 151 miles from Laramie, has the same rate as Betcher, which came about in a rather odd way. Betcher, Colorado to Denver is [fol. 562] 71 miles, if I remember correctly. The rate today is eleven cents plus fifteen percent from both of those mills. The Betcher rate used to be back seven and eight cents, etc. it has been increased until it got up to eleven plus fifteen percent, on account of truck competition.

It so happens that the other mill in Colorado is our own mill at Portland, Colorado, 26½ miles west of Pueblo. 147 miles from Denver by either the Santa Fe or the D&RGW railroad.

They were not content to see all the Denver cement go to the Union Pacific Railroad for hauling out of Betcher, Colorado, so they took the same rate down to Portland. As soon as they did that the Union Pacific said, well that is only 151 miles to Denver as against 147 miles from Portland, so we'll take the rate up to Laramie.

A very unusual situation there, the same identical rate with all the increases is applicable from those three mills into Denver.

His position is that he wants an equality of treatment, in other words he wants the carriers to reduce his rates, and thereby to all purposes, intents, effects and results to move his mill closer to someone else's mill, rate-wise, so he can get into such trade areas as Denver, Colorado, or Ogden, Utah, or Salt Lake City.

Now page seven of his exhibit shows he has a base Utah

[fol. 563] Common point rate of 34 cents, all the way into Ogden and that goes clean back to the Wyoming line, down to Provo, I don't know how much further it goes down, but with those increases there, why he isn't far from scale IV, but is complaining about our rates from Devil's Slide into Ogden and Salt Lake, also Provo, because the Ogden and Salt Lake rates, as I have all ready explained, were plainly made by the carriers, voluntarily, to meet truck competition and to assure them a continuance of the handling of our enormous movement of cement to our Salt Lake City warehouse.

I see nothing wrong with that condition. The rates have never been prescribed by the I.C.C. into Utah or between Utah. I see nothing wrong with that situation, because the rates in the 81 and 82 case, and all the subsequent cases following it, with practically the same scale, rules, regulations, etc., are prescribed.

In the Oklahoma Case Docket 14936, Texas Case Docket 15151, the Arkansas-Louisiana Case Docket 15806, I mean 16845, and in the Southern Cement Cases Docket 15806— they have all had the extended mileage scales of rates, and let chips fall where they may as to the natural advantages and disadvantages, but those were maximum rates and the carriers have been given considerable freedom in establishing lower rates where competition made such lower rates necessary in their opinion.

Mr. Gillette, is the only out of state mill representative [fol. 564] at this hearing. There is a mill at Inkom, Idaho, on the Union Pacific just south of Pocatello, and I have shown their scale of rates, voluntarily maintained by the Union Pacific Railroad, to meet motor competition, which are decidedly lower, mile for mile, than we have anywhere in the State of Utah.

Examiner Witter: Couldn't you put this in a brief?

Mr. Taylor: Well, I have about three more words and then I am through. In fact I don't really want to brief it.

Now to go back to my statement: In conclusion, we respectfully represent that the record here made, shows that Utah rates should not be further increased, also that the Utah Commission not only showed excellent judgment in

not granting the X-175-B increases, but actually did the rail lines a great favor by withholding it.

Exam. Witter: Do you wish to offer your exhibits?

Mr. Taylor: I offer my exhibits for your acceptance——

Exam. Witters: Nos. 77 through 80.

Mr. Taylor: I beg your pardon?

Exam. Witters: 77 through 80.

Mr. Taylor: 77 through 80, I had them all mixed up here and I couldn't find the numbers.

Exam. Witters: Any objections?

Mr. Fitzpatrick: No objections. May we take a little recess, before my cross examination.

[fol. 565] (Protestnats' Exhibits Nos. 77 through 80, witness Taylor received in evidence)

Exam. Witters: We will take a short recess.

(Recess)

Cross examination.

By Mr. Fitzpatrick:

Q. You made a comparison of the Devil's Slide to Idaho Falls rate on page three of Mr. Watson's Exhibit No. 34, you referred there to a rate of—here I'll show it to you right here—referred there to a rate of 35 cents for 217 miles as compared with 37 cents from Scofield for 185 miles. Now referring to that 35 cents, that should be referred to as 35 cents plus fifteen percent, which makes about 40¼, isn't that about right.

A. Yes, that is correct. I failed to mention the fifteen percent.

Mr. Fitzpatrick: That's all.

By Mr. Miner:

Q. I have just a couple Mr. Taylor. You say your company doesn't own any trucks at all?

A. Nothing except plant service trucks, facility trucks.

Q. In other words you don't transport any of this cement to Ogden, Salt Lake or other places in your own trucks?

A. No, sir.

Q. Do you transport most of your cement to your Salt Lake Plant, on this rate as given by the Union Pacific, by rail?

A. We transport all by rail.

Q. And then that all moves out from Salt Lake by truck?

[fol. 566] A. Well, it moves to Salt Lake and various and sundry places—Salt Lake is the biggest market.

Q. My question is, that after it gets to your plant here, it moves out from your plant here by truck?

A. Altogether.

Q. Altogether?

A. Yes sir.

Q. Except for what you move from Devil's Slide, the big majority of that moves from Devil's Slide by truck?

A. Yes, approximately 68 and a fraction percent I believe I said.

Q. The truckers come and get that, you don't route that yourself?

A. No, sir.

Q. So that isn't a question of whether you have the right to choose or who gets the right to choose, its the dealers that use the trucks to come and get it?

A. No, we have no say so, the Cement Institute had a suit grought against them several years ago, by the Federal Trade Commission, and it was finally upheld by the United States Supreme Court—I don't have the citation——

Q. But my point on that is, you don't know what the considerations of these dealers are, that come after it by truck, whether it is the rate or the convenience to go on the job, or what?

[fol. 567] A. I don't happen to have the information from Devil's Slide, but I can and do have some information about the Colorado Mills, because I just got through making an investigation.

Q. But you don't have it for Devil's Slide?

A. I don't have the trucking rates out of Devil's Slide, as I recall. Our operations run all the way from Mobile, Alabama, to mills in California, and one in southwest Oregon, and with twenty-seven states to keep up with as to our own rates, and our competitors' rates, I have really a man-sized job. Different truck rates vary so greatly, it is almost impossible to keep up with them.

Q. Well, a lot of this that moves out of Devil's Slide is by the dealers' own trucks who buy the cement?

A. Oh, yes. Dealers and—we have no choice in the matter, if they come in—I understand that we have taken the position over there, that we were never in a retail business, and the minimum car load rate, the general prevailing minimum car load rate in Utah, is generally 40,000 pounds, there are several variations, but we have not been shipping less than 25,000 and we have no request for less than that.

Q. But the point is, there may be various considerations, aside from the rate, that effects these movements by the trucks.

A. Yes, you might have, I don't know where the bulk mixing plants are located here, but there are four or five [fol. 568] of them operating in Denver, for example, and everything moves by motor truck, even though their rate is higher than your rail rate into Denver.

Q. And there are likewise off rail mixing plants in the Salt Lake-Ogden areas.

A. I don't really know that, I understand that there is one, a Mr. Westfall, or some name like that, either Clarence Waterfall, Westfall, or something like that at Ogden, and there may be some here in Salt Lake City, I tried to see our Sales Manager, but we started this meeting at 9 o'clock, and I have been unable to get in contact with him at the time available to me, to find out just exactly what is going on there.

Mr. Miner: I think that is all.

Exam. Witters: The hearing is closed.

(Whereupon at 6:45 o'clock P.M. Friday May 21, 1954 the hearing in the above-entitled matter was closed)

[fol. 418] IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1957—No. 15.

PUBLIC SERVICE COMMISSION OF UTAH AND UTAH CITIZENS RATE ASSOCIATION, Appellants

—v.—

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, THE DENVER AND RIO GRANDE WESTERN RAILWAY COMPANY, et al.,

STIPULATION—Filed October 16, 1957

The parties to the above-entitled cause hereby stipulate (1) that any party may refer in its brief or oral argument to any portion of the record designated for printing by the Clerk of this Court but (by an error of the printer) not included in the printed record and (2) that this stipulation shall be printed by the Clerk of this Court as an additional part of the record.

E. R. Callister, Counsel for Appellant Public Service Commission of Utah

Calvin L. Rampton, Counsel for Appellant Utah Citizens Rate Association

J. Lee Rankin, Solicitor General, Counsel for the United States

Charlie H. Johns, Jr., Counsel for Interstate Commerce Commission

Elmer B. Collins, Counsel for Railroad Appellees

Dated: October 16, 1957.

VOLUME II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1957

No. 15

PUBLIC SERVICE COMMISSION OF UTAH AND UTAH CITIZENS RATE ASSOCIATION, APPELLANTS,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, THE DENVER AND RIO GRANDE WESTERN RAILWAY COMPANY, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

FILED AUGUST 30, 1956

PROBABLE JURISDICTION NOTED NOVEMBER 5, 1956

Before The

INTERSTATE COMMERCE COMMISSION

IN RE: UTAH INTRASTATE FREIGHT RATES AND CHARGES - EX PARTE 175

[Vol. 269] RESPONDENTS' EXHIBIT No. 1

I N D E X

Graph Showing Index Numbers (1939-100) Wholesale Prices, Consumers' Price Index and Prices Received by Farmers in the United States Compared with Revenue Per Ton Mile in the United States and the Western District, Years 1939 Through 1953. . . . . .

Index Numbers (1947-1949-100) of Wholesale Prices by Major Groups, Also Converted to (1939-100) in the United States, Years 1939 Through 1953 . . . . . .

Consumers' Price Index, Index Numbers (1947-1949-100) by Major Groups, Converted to (1939-100) in the United States, Years 1939 Through 1953. . . . . .

Index Numbers (1910-1914-100) Prices Received and Paid by Farmers, Also Converted to 1939-100 in the United States, Years 1939 Through 1953 . . . . . .

Graphs Showing Average Revenue Per Ton Mile in the State of Utah Expressed in Current and Constant Dollars (1939-100) and Average Revenue Per Ton Mile in the State of Utah Compared with Average Revenue Per Ton Mile in the Western District and the United States, Years 1939 Through 1952. . . . . .

Revenue Tons One Mile, Freight Revenue and Revenue Per Ton Mile Within the State of Utah, Also Revenue Per Ton Mile in Mountain Pacific States, the Western District and the United States, Years 1939 Through 1952. . . . . .

Statement and Graphs Showing Total Income Payments to Individuals and Income Payments Per Capita in the State of Utah, the Western District and the United States, Years 1939 Through 1952 . . . . . .

Graphs Showing Index Numbers (1939-100) Population and Percent Non-Agricultural Employment of Total Population in the State of Utah, the Western District and the United States, Years 1939 Through 1952. . . . . .

Population, Average Annual Non-Agricultural Employment and Percent Non-Agricultural Employment of Population in the State of Utah, the Western District and the United States, Years 1939 Through 1952. . . . . .

Graph Showing Index Numbers (1939-100) Non-Agricultural Employment in the State of Utah, the Western District and the United States, Years 1939 Through 1952. . . . . .

Cash Farm Income From Sale of Livestock and Products and Crops in the State of Utah, Years 1946 through 1952. . . . . .

Graph Showing Cash Farm Income From Livestock and Products and Crops by Major Groups in the State of Utah, Years 1946 Through 1952. . . . . .

Mineral Production and Value in the State of Utah - Years 1947 Through 1950 . . . . . .

Statement and Graph Showing Value of Mineral Production in the State of Utah - Years 1939 Through 1950. . . . . .

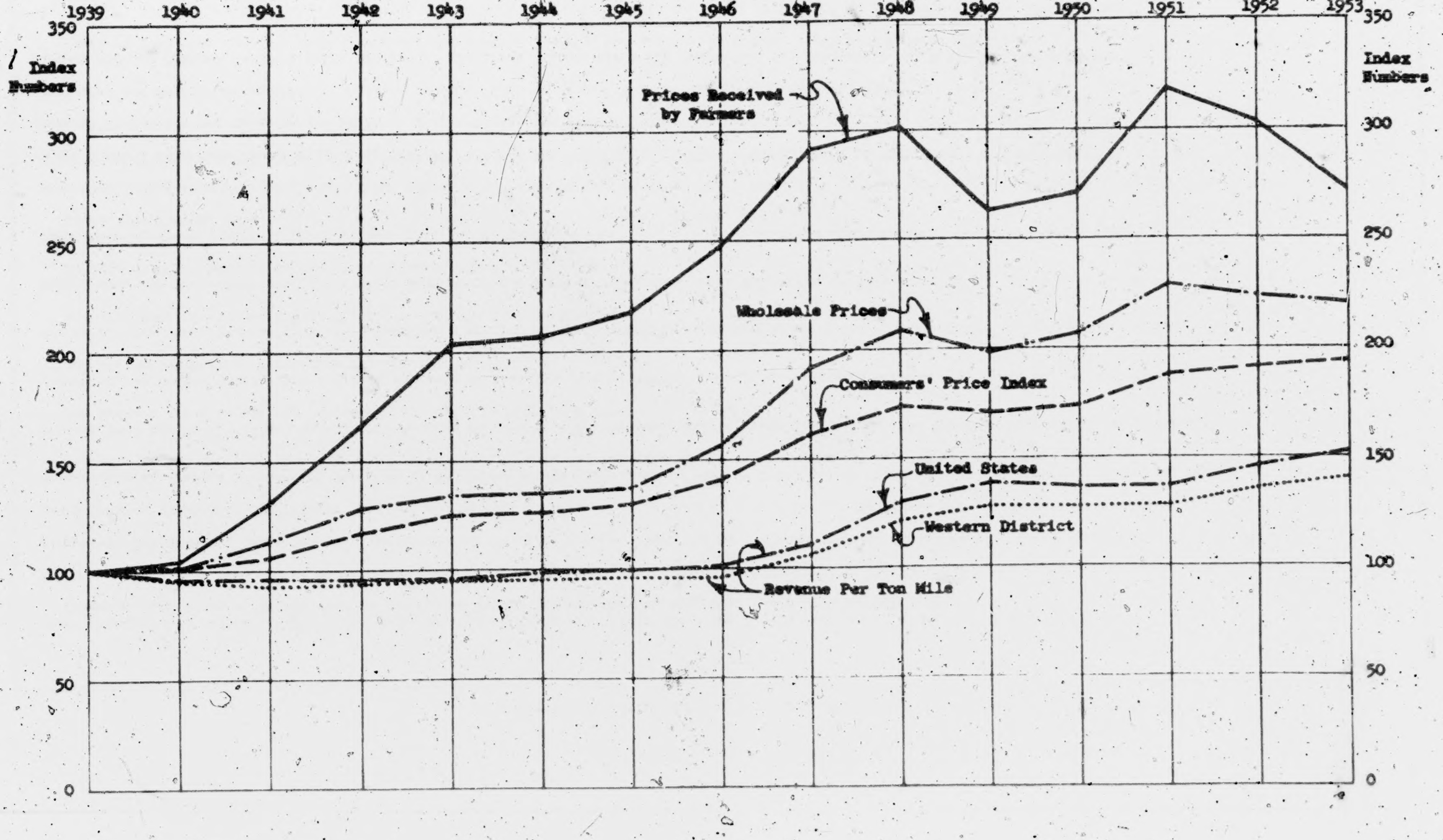
Graphs Showing Private and Commercial Automobile and Truck Registrations and Population Per Automobile and Truck Registered in the State of Utah, the Mountain Pacific States, the Western District and the United States, Years 1939 Through 1952. . . . . .

Population, Automobiles and Trucks Registered and Population Per Automobile and Truck Registered in the State of Utah, the Mountain Pacific States, the Western District and the United States, Years 1939 Through 1952. . . . . .

Hearing:
Salt Lake City, Utah
May 20, 1954

Statistical Bureau
Executive Committee-Western Traffic Association
Chicago, Illinois
No. 2425

INDEX NUMBERS (1939=100) WHOLESALE PRICES, CONSUMERS' PRICE INDEX AND PRICES RECEIVED BY FARMERS IN THE UNITED STATES
COMPARED WITH REVENUE PER TON MILE IN THE UNITED STATES AND THE WESTERN DISTRICT
YEARS 1939 THROUGH 1953



420
[fol. 570]

[fol. 571]

INDEX NUMBERS (1947-1949=100) OF WHOLESALE PRICES BY MAJOR GROUPS, ALSO CONVERTED TO (1939=100) IN THE UNITED STATES YEARS 1939 THROUGH 1953

Item (1)	1939 (2)	1940 (3)	1941 (4)	1942 (5)	1943 (6)	1944 (7)	1945 (8)	1946 (9)	1947 (10)	1948 (11)	1949 (12)	1950 (13)	1951 (14)	1952 (15)	1953 (16)
Index Numbers (1947-1949=100)															
All Commodities	50.1	51.1	56.8	64.2	67.0	67.6	68.8	78.7	96.4	104.4	99.2	103.1	114.8	111.6	110.1
Farm Products	36.5	37.8	46.0	59.2	68.5	68.9	71.6	83.2	100.0	107.3	92.8	97.5	113.4	107.0	97.0
Foods, Processed	43.3	43.6	50.5	59.1	61.6	60.4	60.8	77.6	98.2	106.1	95.7	99.8	111.4	108.8	104.6
Commodities Other Than Farm Products and Processed Foods	58.1	59.4	63.7	68.3	69.3	70.4	71.3	78.3	95.3	103.4	101.3	105.0	115.9	113.2	114.0
Chemicals and Allied Products	55.8	56.6	61.6	69.3	69.5	70.2	70.6	76.3	101.4	103.8	94.8	96.3	110.0	104.5	105.7
Fuel Power and Lighting Materials	61.8	60.7	64.5	66.4	68.4	70.3	71.1	76.2	90.9	107.1	101.9	103.0	106.7	106.6	109.5
Furniture, Household	59.5	59.8	64.7	71.3	71.6	73.8	74.7	79.9	95.6	102.8	101.5	105.2	116.4	113.0	114.3
Hides, Skins and Leather Products	52.0	54.8	58.9	64.0	63.9	63.4	64.2	74.6	101.0	102.1	96.9	104.6	120.3	97.2	98.5
Lumber and Wood Products	31.6	35.2	41.8	45.4	48.0	51.9	52.5	60.3	93.7	107.2	99.2	113.9	123.9	120.3	120.2
Metals and Metal Products	62.6	62.8	64.0	64.9	64.8	64.8	65.9	73.9	91.3	103.9	104.8	110.3	122.8	123.0	126.9
Non-Metallic Minerals, Structural	69.5	69.7	71.3	74.1	74.5	75.9	79.1	84.2	93.9	101.7	104.4	106.9	113.6	113.6	118.?
Index Numbers (1939=100)															
All Commodities	100	102	113	128	134	135	137	157	192	208	198	206	229	223	220
Farm Products	100	104	126	162	188	189	196	228	274	294	254	267	311	293	266
Foods, Processed	100	101	117	136	142	139	140	179	227	245	221	230	257	251	242
Commodities Other Than Farm Products and Processed Foods	100	102	110	118	119	121	123	135	164	178	174	181	199	195	196
Chemicals and Allied Products	100	101	110	124	125	126	127	137	182	186	170	173	197	187	189
Fuel Power and Lighting Materials	100	98	104	107	111	114	115	123	147	173	165	167	173	172	177
Furniture, Household	100	101	109	120	120	124	126	134	161	173	171	177	196	190	192
Hides, Skins and Leather Products	100	105	113	123	123	122	123	143	194	196	186	201	231	187	189
Lumber and Wood Products	100	111	132	144	152	164	166	191	297	339	314	360	392	381	380
Metals and Metal Products	100	100	102	104	104	104	105	118	146	166	167	176	196	196	203
Non-Metallic Minerals, Structural	100	100	103	107	107	109	114	121	135	146	150	154	163	163	170
Purchasing Power of The Dollar as Measured by "Wholesale Prices," 1939=100	100.0	98.0	88.2	78.1	74.8	74.1	72.8	63.7	52.0	48.0	50.5	48.6	43.6	44.9	45.5

SOURCE: Bureau of Labor Statistics as reported in "Survey of Current Business" 1953 Statistical Supplement and March 1954 issue.

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CONSUMERS' PRICE INDEX
INDEX NUMBERS (1947-1949=100) BY MAJOR GROUPS,
CONVERTED TO (1939=100) IN THE UNITED STATES
YEARS 1939 THROUGH 1953

Item (1)	1939 (2)	1940 (3)	1941 (4)	1942 (5)	1943 (6)	1944 (7)	1945 (8)	1946 (9)	1947 (10)	1948 (11)	1949 (12)	1950 (13)	1951 (14)	1952 (15)	1953 (16)
Index Numbers (1947-1949=100)															
All Items	59.4	59.9	62.9	69.7	74.0	75.2	76.9	83.4	95.5	102.8	101.8	102.8	111.0	113.5	114.4
Apparel	52.5	53.2	55.6	64.9	67.8	72.6	76.3	83.7	97.1	103.5	99.4	98.1	106.9	105.8	104.8
Food	47.1	47.8	52.2	61.3	68.3	67.4	68.9	79.0	95.9	104.1	100.0	101.2	112.6	114.6	112.8
Gas and Electricity	104.9	103.9	103.0	102.5	101.9	101.6	100.7	97.9	97.6	100.0	102.5	102.7	103.1	104.5	106.6
House Furnishings	53.4	53.0	56.6	64.4	66.2	71.9	76.9	83.9	97.2	103.2	99.6	100.3	111.2	108.5	107.9
Rent	86.6	86.9	88.4	90.4	90.3	90.6	90.9	91.4	94.4	100.7	105.0	108.8	113.1	117.9	124.1
Index Numbers (1939=100)															
All Items	100	101	106	117	125	127	129	140	161	173	171	173	187	191	193
Apparel	100	101	106	124	129	138	145	159	185	197	189	187	204	202	200
Food	100	101	111	130	145	143	146	168	204	221	212	215	239	243	239
Gas and Electricity	100	99	98	98	97	97	96	93	93	95	98	98	98	100	102
House Furnishings	100	99	106	121	124	135	144	157	182	193	187	188	208	203	202
Rent	100	100	102	104	104	105	105	106	109	116	121	126	131	136	143
Purchasing Power of The Dollar as Measured by "Consumers Prices" 1939=100	100.0	99.0	94.3	85.5	80.0	78.7	77.5	71.4	62.1	57.8	58.3	57.8	53.5	52.4	51.8

SOURCE: Bureau of Labor Statistics as reported in "Survey of Current Business" 1953 Statistical Supplement and March 1954 issue.

[fol. 572]

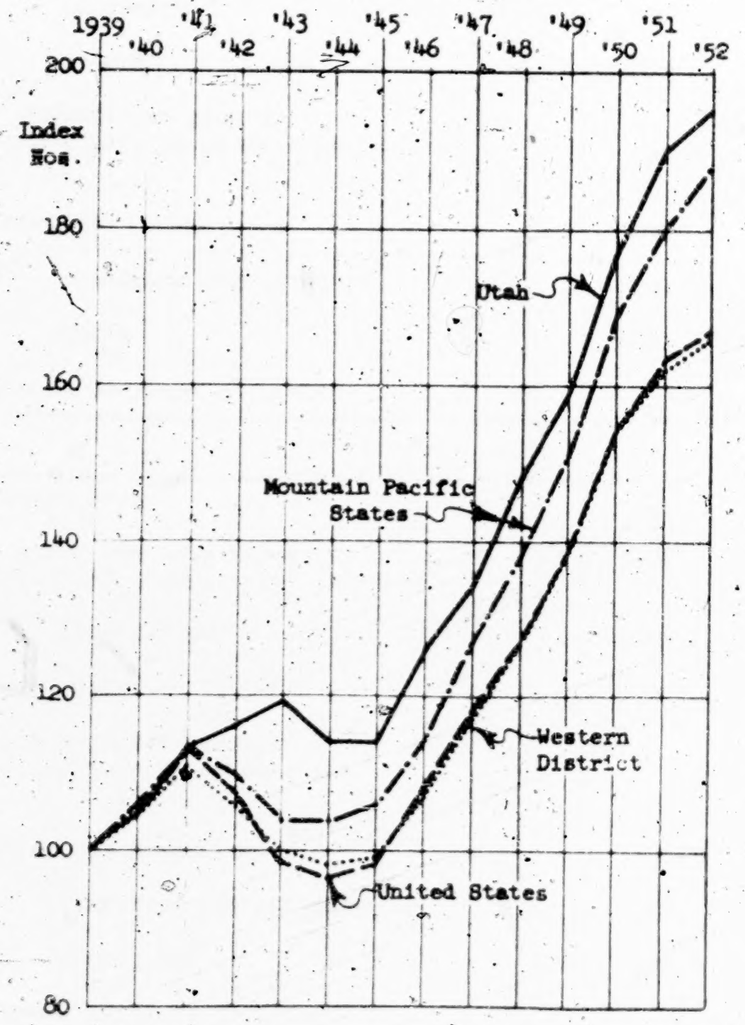
[fol. 573]

INDEX NUMBERS, (1910-1914=100) PRICES RECEIVED AND PAID BY FARMERS
ALSO CONVERTED TO 1939=100 IN THE UNITED STATES
YEARS 1939 THROUGH 1953

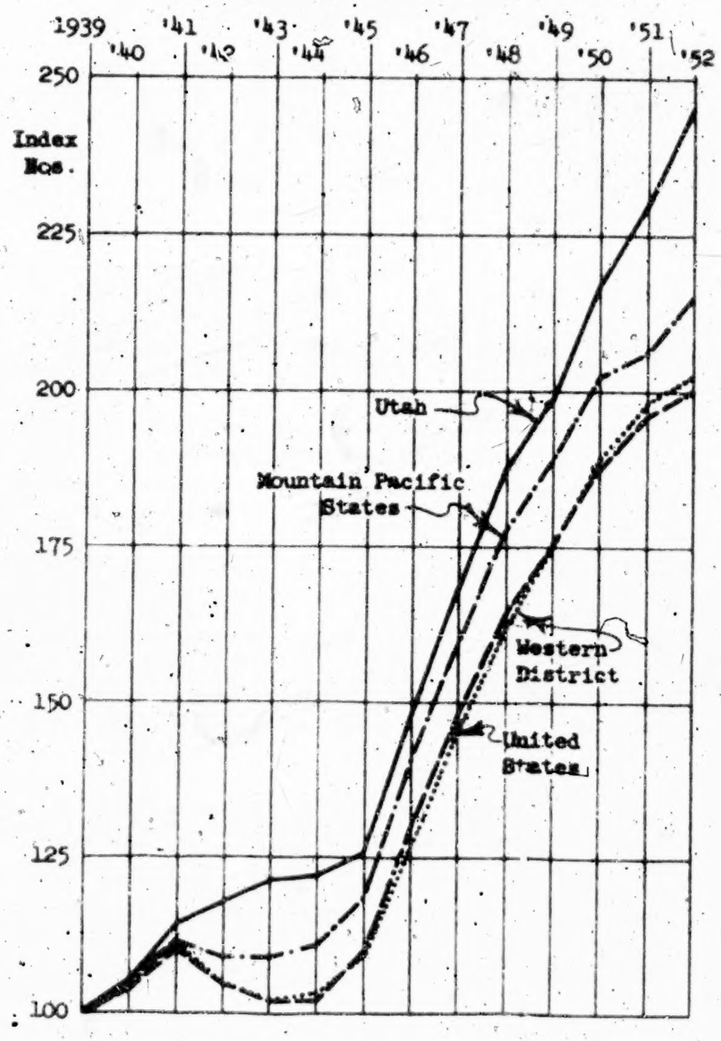
Item (1)	1939 (2)	1940 (3)	1941 (4)	1942 (5)	1943 (6)	1944 (7)	1945 (8)	1946 (9)	1947 (10)	1948 (11)	1949 (12)	1950 (13)	1951 (14)	1952 (15)	1953 (16)
Index Numbers (1910-1914=100)															
Prices Received By Farmers															
Crops	82	90	108	145	187	199	202	228	263	255	224	233	265	267	242
Livestock and Products	107	109	138	171	198	196	211	242	288	315	272	280	336	306	273
Total All Commodities	95	100	124	159	193	197	207	236	276	287	250	258	302	288	258
Prices Paid By Farmers For Commodities Used In															
Living	120	121	130	149	166	175	182	202	237	251	243	246	268	271	270
Production	121	123	130	148	164	173	176	191	224	250	238	246	273	274	253
Total All Commodities, Interest, Taxes and Wage Rates	123	124	133	152	171	182	190	208	240	260	251	256	282	287	279
Parity Ratio	77	81	93	105	113	108	109	113	115	110	100	101	107	100	92
Index Numbers (1939=100)															
Prices Received By Farmers															
Crops	100	110	132	177	228	243	246	278	321	311	273	284	323	326	295
Livestock and Products	100	102	129	160	185	183	197	226	269	294	254	262	314	286	255
Total All Commodities	100	105	131	167	203	207	218	248	291	302	263	272	318	303	272
Prices Paid By Farmers For Commodities Used In															
Living	100	101	108	124	138	146	152	168	197	209	202	205	223	226	225
Production	100	102	107	122	136	143	145	158	185	207	197	203	226	226	209
Total All Commodities, Interest, Taxes and Wage Rates	100	101	108	124	139	148	154	169	195	211	204	208	229	233	227

SOURCE: Bureau of Agricultural Economics, United States Department of Agriculture, as reported in "Survey of Current Business" 1953 Statistical Supplement and March 1954 issue.

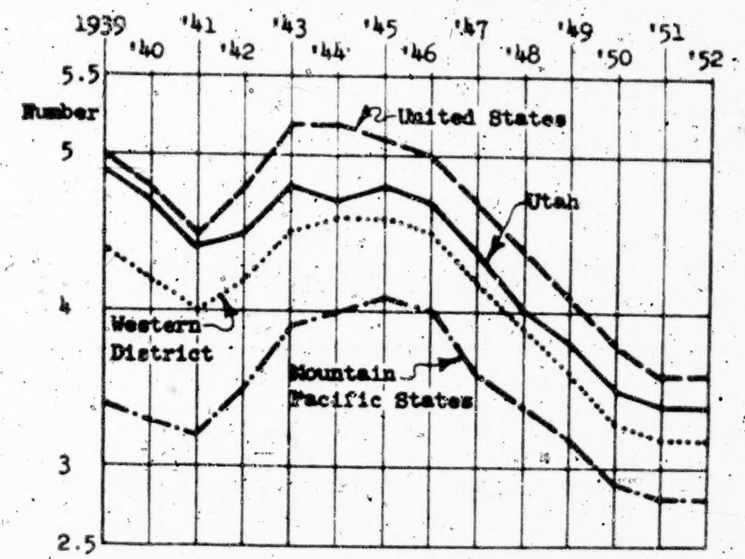
INDEX NUMBERS (1939-100) PRIVATE AND COMMERCIAL AUTOMOBILE REGISTRATIONS IN THE STATE OF UTAH, THE MOUNTAIN PACIFIC STATES, THE WESTERN DISTRICT AND THE UNITED STATES YEARS 1939 THROUGH 1952



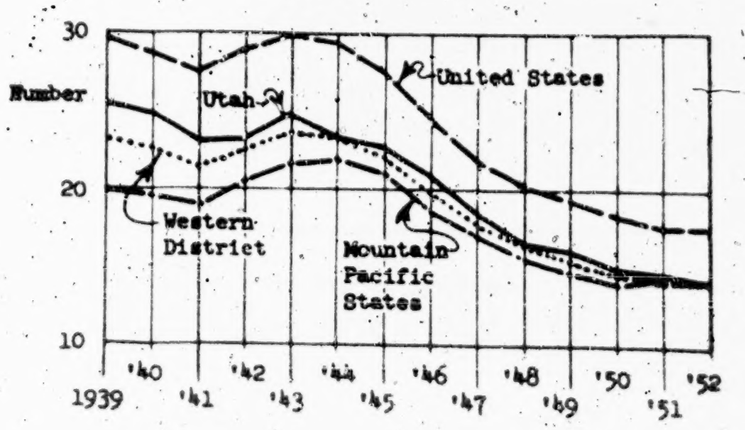
INDEX NUMBERS (1939-100) PRIVATE AND COMMERCIAL TRUCK REGISTRATIONS IN THE STATE OF UTAH, THE MOUNTAIN PACIFIC STATES, THE WESTERN DISTRICT AND THE UNITED STATES YEARS 1939 THROUGH 1952



POPULATION PER AUTOMOBILE REGISTERED IN THE STATE OF UTAH, THE MOUNTAIN PACIFIC STATES, THE WESTERN DISTRICT AND THE UNITED STATES YEARS 1939 THROUGH 1952



POPULATION PER TRUCK REGISTERED IN THE STATE OF UTAH, THE MOUNTAIN PACIFIC STATES, THE WESTERN DISTRICT AND THE UNITED STATES YEARS 1939 THROUGH 1952



POPULATION, AUTOMOBILES AND TRUCKS REGISTERED AND POPULATION PER AUTOMOBILE AND TRUCK REGISTERED IN THE STATE OF UTAH, THE MOUNTAIN PACIFIC STATES, THE WESTERN DISTRICT AND THE UNITED STATES YEARS 1939 THROUGH 1952

Year (1)	Population (Thousands) Utah (2)	Mountain Pacific (3)	Western District (4)	United States (5)	Automobile Registrations Utah (6)	Mountain Pacific (7)	Western District (8)	United States (9)	Truck Registrations Utah (10)	Mountain Pacific (11)	Western District (12)	United States (13)	Population Per Automobile Registered Utah (14)	Mountain Pacific (15)	Western District (16)	United States (17)
1939	543	13 681	51 172	130 882	110 980	4 003 901	11 759 177	26 139 526	21 215	688 497	2 208 441	4 406 702	4.9	3.4	4.4	5.0
1940	553	13 994	51 548	131 936	117 026	4 243 666	12 324 678	27 372 397	22 234	719 968	2 304 418	4 590 386	4.7	3.3	4.2	4.8
1941	556	14 536	51 834	133 058	125 633	4 525 867	13 103 118	29 524 101	24 229	771 040	2 448 785	4 859 244	4.4	3.2	4.0	4.5
1942	577	15 286	52 503	133 752	128 564	4 412 248	12 514 767	27 868 746	24 940	749 331	2 315 350	4 608 086	4.5	3.5	4.2	4.8
1943	635	16 241	53 355	133 971	132 088	4 183 968	11 767 008	25 912 730	25 615	748 000	2 247 811	4 480 176	4.8	3.9	4.5	5.2
1944	602	16 748	52 864	132 622	126 950	4 180 959	11 547 811	25 466 331	25 856	764 723	2 272 556	4 513 340	4.7	4.0	4.6	5.2
1945	612	17 294	53 141	132 137	126 829	4 244 289	11 607 125	25 691 434	26 819	818 777	2 405 022	4 834 742	4.8	4.1	4.6	5.1
1946	650	18 103	55 880	139 893	139 402	4 560 594	12 538 325	28 100 188	31 318	968 402	2 810 825	5 725 692	4.7	4.0	4.5	5.0
1947	653	18 507	57 045	143 375	148 517	5 094 492	13 741 062	30 718 852	35 670	1 092 153	3 208 568	6 512 628	4.4	3.6	4.2	4.7
1948	663	18 959	58 170	146 045	164 538	5 506 513	14 887 991	33 261 454	39 990	1 221 199	3 578 327	7 227 380	4.0	3.4	3.9	4.4
1949	677	19 218	59 158	148 558	176 928	6 062 234	16 375 173	36 292 703	42 247	1 300 619	3 866 963	7 692 569	3.8	3.2	3.6	4.1
1950	693	19 591	60 543	151 228	196 614	6 769 781	18 133 973	40 185 146	46 117	1 394 530	4 169 331	8 238 632	3.5	2.9	3.3	3.8
1951	708	20 245	61 677	153 383	210 940	7 222 823	19 104 035	42 525 217	48 807	1 420 689	4 365 667	8 623 090	3.4	2.8	3.2	3.6
1952	737	20 891	62 852	155 767	216 286	7 532 864	19 515 692	43 653 545	51 957	1 482 010	4 470 609	8 817 140	3.4	2.8	3.2	3.6

Index Numbers 1939=100													Population Per Truck Registered Utah	Mountain Pacific	Western District	United States
1939	100	100	100	100	100	100	100	100	100	100	100	100	25.6	19.9	23.2	29.7
1940	102	102	101	101	105	106	105	105	105	105	104	104	24.9	19.4	22.4	28.7
1941	102	106	101	102	113	113	111	113	114	112	111	110	22.9	18.9	21.2	27.4
1942	106	112	103	102	116	110	106	107	118	109	105	105	23.1	20.4	22.7	29.0
1943	117	119	104	102	119	104	100	99	121	109	102	102	24.8	21.7	23.7	29.9
1944	111	122	103	101	114	104	98	97	122	111	103	102	23.3	21.9	23.3	29.4
1945	113	126	104	101	114	106	99	98	126	119	109	110	22.8	21.1	22.1	27.3
1946	120	132	109	107	126	114	107	108	148	141	127	130	20.8	18.7	19.9	24.4
1947	120	135	111	110	134	127	117	118	168	159	145	148	18.3	16.9	17.8	22.0
1948	122	139	114	112	148	138	127	127	188	177	162	164	16.6	15.5	16.3	20.2
1949	125	140	116	114	159	151	139	139	199	189	175	175	16.0	14.8	15.3	19.3
1950	128	143	118	116	177	169	154	154	217	203	189	187	15.0	14.0	14.5	18.4
1951	130	148	121	117	190	180	162	163	230	206	198	196	14.5	14.3	14.1	17.8
1952	136	153	123	119	195	188	166	167	245	215	202	200	14.2	14.1	14.1	17.7

SOURCE: Population Estimates "Bureau of Census"; Automobile and Truck Registrations "Bureau of Public Roads". Both of United States Department of Commerce.

[Fol 576] [RESPONDENTS' EXHIBIT No. 2]

Before The

(p 426)

INTERSTATE COMMERCE COMMISSION

IN RE: UTAH INTRASTATE FREIGHT RATES AND CHARGES - EX PARTE 175

INDEX

System Property Investment Used in Transportation Service (Book Value Less Recorded Depreciation and Amortization Charges) and System Operating Income Account for Class I Roads Serving State of Utah, Years 1948 Through 1953. . . . . .

System Operating Income Account for First Three Months of 1953 and 1954, Class I Roads Serving State of Utah . . . . . .

Employees and Average Straight-Time Hourly Wage Rate, Class I Roads Serving State of Utah, Years 1948 Through 1953. . . . . .

Index of Western District Average Unit Prices of Railway Material and Supplies, Including Fuel, on Basis of June 1947, June 1948 and July 1949 Prices as Equal to 100.0 . . . . . .

Operating Trends - Class I Roads in the Western District, Years 1939, 1949, 1951 and 1952. . . . . .

Estimated Annual Revenue Being Sought by the Carriers on Utah Intrastate Traffic Based on Study Period of May, August and November 1953 as well as February 1954. . . . . .

Estimated Annual Revenue Being Sought by the Carriers on Switching in Utah Based on Study Period of May, August and November 1953 as well as February 1954. . . . . .

Hearing:
Salt Lake City, Utah
May 20, 1954

Statistical Bureau
Executive Committee-Western Traffic Association
Chicago, Illinois

No. 2422

SYSTEM PROPERTY INVESTMENT USED IN TRANSPORTATION SERVICE (BOOK VALUE LESS RECORDED DEPRECIATION AND AMORTIZATION CHARGES)
AND SYSTEM OPERATING INCOME ACCORDING FOR CLASS I ROADS SERVING STATE OF UTAH
YEARS 1948 THROUGH 1953

Item (1)	1948 (2)	1949 (3)	1950 (4)	1951 (5)	1952 (6)	1953 (7)
Property Investment						
Gross Property Investment	$2 886 825 152	$2 987 791 493	$3 105 398 013	$3 265 538 048	$3 413 9[illegible]5 448	$3 538 000 304
Recorded Depreciation and Amortization	509 181 205	570 742 411	541 758 519	522 915 551	613 971 179	695 582 192
Net Property Investment	2 377 643 947	2 417 049 082	2 563 639 494	2 742 622 497	2 800 024 269	2 842 418 112
Net Railway Operating Income	94 576 606	62 410 993	110 929 492	100 392 180	109 570 375	97 663 995
Rate of Return on Net Investment - Percent	3.98	2.58	4.33	3.66	3.91	3.44
Income Account						
Total Operating Revenues	1 009 840 050	925 428 564	1 052 457 976	1 149 176 313	1 212 026 267	1 221 428 566
Freight Revenue	841 920 327	778 553 932	892 175 400	983 061 411	1 035 948 458	1 058 188 281
Passenger Revenue	96 293 004	78 246 615	77 757 692	89 314 893	90 646 465	81 462 453
All Other Revenues	71 626 719	68 628 017	82 524 884	76 800 009	85 431 344	81 777 832
Total Operating Expenses	767 335 372	739 494 238	750 882 401	860 335 171	900 256 770	918 603 676
Operating Ratio - Percent	75.99	79.91	71.35	74.87	74.28	75.21
Railway Tax Accruals	118 201 002	93 173 665	155 657 846	159 455 846	170 439 279	163 399 512
Net Rents - Debit	2 727 070	30 349 668	34 988 237	28 993 116	31 759 843	41 761 383
Net Railway Operating Income	94 576 606	62 410 993	110 929 492	100 392 180	109 570 375	97 663 995
Total Fixed Charges and Other Deductions	52 037 313	47 001 767	61 058 776	57 765 680	68 870 636	27 921 193
Net Income	84 594 382	72 680 843	95 214 960	103 329 075	119 669 610	136 001 752

NOTES: Property Investment-Net is carriers' investment in road and equipment used in transportation service, plus cash, material and supplies, less recorded depreciation and amortization as shown by their books on an average as of beginning and end of each year.

Fixed Charges and Other Deductions include rent for leased road and equipment, interest on funded and unfunded debt including contingent interest and amortization of discount on funded debt, and income applied to sinking and other reserve funds. Year 1953 includes Leased Lines for account of So. Pac. Co

ROADS REPRESENTED: D&RGW, So. Pac., Un. Pac., Utah and West. Pac.

SOURCE: Carriers' reports to the Interstate Commerce Commission.

SYSTEM OPERATING INCOME ACCOUNT FOR FIRST THREE MONTHS OF 1953 AND 1954
CLASS I ROADS SERVING STATE OF UTAH

Item (1)	First Three Months		Percent 1954 of 1953 (4)
	1953 (2)	1954 (3)	
Total Operating Revenues	$292 392 508	$252 239 732	86.27
Freight Revenue	254 512 124	219 778 436	86.35
Passenger Revenue	19 576 747	15 926 164	81.35
All Other Revenues	18 303 637	16 535 132	90.34
Total Operating Expenses	219 188 768	200 340 032	91.40
Operating Ratio - Percent	74.96	79.42	
Railway Tax Accruals	42 163 170	28 507 926	67.61
Payroll Taxes	7 748 812	7 058 161	91.09
Federal Income Taxes	24 161 761	10 462 148	43.30
All Other Taxes	10 252 597	10 987 617	107.17
Net Rents - Debit	7 272 009	6 099 419	83.88
Net Railway Operating Income	23 768 561	17 292 355	72.75

ROADS REPRESENTED: D&RGW, So. Pac., Un. Pac., Utah and West. Pac.

SOURCE: Carriers' reports to the Interstate Commerce Commission.

[fol. 579]

EMPLOYEES AND AVERAGE STRAIGHT-TIME HOURLY WAGE RATE
CLASS I ROADS SERVING STATE OF UTAH
YEARS 1948 THROUGH 1953

Year (1)	Average Number of Employees (2)	Straight-time Hours (3)	Straight-time Compensation (4)	Average Straight-time Hourly Rate (5)	Index (6)
1948	129 492	297 352 628	$386 845 411	$ 1.301	100.00
1949	120 772	263 753 882	381 446 301	1.446	111.15
1950	127 369	254 187 673	401 798 160	1.581	121.52
1951	132 283	278 666 080	489 616 775	1.757	135.05
1952	131 922	278 148 452	516 935 923	1.858	142.81
1953	133 013	279 552 171	530 506 590	1.898	145.89

ROADS REPRESENTED: D&RGW, So. Pac., Un. Pac., Utah and West. Pac.

SOURCE: Schedule 561 of Carriers' Annual Reports, Form "A" to the Interstate Commerce Commission.

INDEX OF WESTERN DISTRICT AVERAGE UNIT PRICES OF RAILWAY MATERIAL AND SUPPLIES INCLUDING FUEL, ON BASIS OF JUNE 1947, JUNE 1948 AND JULY 1949 PRICES AS EQUAL TO 100.0

Month (1)	Material and Supplies Excluding Fuel		Fuel (Coal and Oil)		All Material and Supplies	
	Index 1947-1949 =100.0 (2)	Ratio (3)	Index 1947-1949 =100.0 (4)	Ratio (5)	Index 1947-1949 =100.0 (6)	Ratio (7)
July 1949	104.7	100.0	90.5	100.0	99.0	100.0
October 1949	104.3	99.6	86.5	95.6	97.2	98.2
January 1950	106.4	101.6	85.5	94.5	98.1	99.1
April 1950	107.0	102.2	93.6	103.4	101.7	102.7
July 1950	109.2	104.3	97.0	107.2	104.3	105.4
October 1950	113.7	108.6	98.8	109.2	107.8	108.9
January 1951	122.1	116.6	103.4	114.3	114.6	115.8
April 1951	123.9	118.3	106.5	117.7	117.0	118.2
July 1951	125.0	119.4	108.7	120.1	118.5	119.7
October 1951	125.1	119.5	108.7	120.1	118.6	119.8
January 1952	125.2	119.6	107.6	118.9	118.2	119.4
April 1952	125.0	119.4	103.8	114.7	116.6	117.8
July 1952	124.2	118.6	98.8	109.2	114.1	115.3
October 1952	125.6	120.0	94.7	104.6	113.3	114.4
January 1953	126.4	120.7	95.4	105.4	114.0	115.2
April 1953	127.9	122.2	98.0	108.3	115.8	117.0
July 1953	130.4	124.6	100.2	110.7	118.3	119.5
October 1953	130.6	124.7	101.2	111.8	118.8	120.0
January 1954	130.6	124.7	102.9	113.7	119.4	120.6

SOURCE: A.A.R. Bureau of Railway Economics.

OPERATING TRENDS - CLASS I ROADS IN THE WESTERN DISTRICT
YEARS 1939, 1949, 1951 AND 1952

Period (1)	Average capacity per freight car (tons) (2)	Freight car miles per freight car-day (service-able) (3)	Net ton-miles per service-able freight car-day (4)	Net tons per loaded car (5)	Freight train load (tons) (6)	Freight train speed (M.p.h.) (7)	Gross ton miles (excluding loco. and tender) per freight train-hour (8)	Freight locomotive miles per loco.-day (active locomoti s) (9)
Year 1939	45.9	39.2	588	24.0	684	17.8	32 190	105.8
Year 1949	49.5	53.1	1 008	29.3	1 075	17.9	44 518	124.2
Year 1951	50.0	56.4	1 108	30.4	1 216	18.3	49 344	133.5
Year 1952	50.5	54.8	1 049	30.2	1 213	19.0	52 066	137.2

SOURCE: I.C.C. Statements M-211 and M-240 and Preliminary Abstract of Railway Statistics.

ESTIMATED ANNUAL REVENUE BEING SOUGHT BY THE CARRIERS ON UTAH INTRASTATE TRAFFIC
BASED ON STUDY PERIOD OF MAY, AUGUST AND NOVEMBER 1953
AS WELL AS FEBRUARY 1954

Item (1)	Number of Cars (2)	Number of Tons (3)	Freight Charges		Revenue Difference (6)
			Actually Assessed (4)	Including Full X-175 Increases (5)	
Products of Agriculture	474	16 311	$ 36 603	$ 41 139	$ 4 536
Animals and Products	5 205	53 892	317 850	365 529	47 679
Products of Mines	117 345	7 449 036	12 495 675	14 028 225	1 532 550
Products of Forests	-	-	-	-	-
Manufactures and Miscellaneous	19 830	777 303	1 766 247	2 030 115	263 868
Forwarder Traffic	-	-	-	-	-
Grand Total, Carload Traffic	142 854	8 296 542	14 616 375	16 465 008	1 848 633
All L.C.L. Freight	-	7 647	121 668	139 911	18 243
Grand Total Carload and L.C.L. Traffic	-	8 304 189	14 738 043	16 604 919	1 866 876

ROADS REPRESENTED: D&RGW, So. Pac., Un. Pac., Utah, West. Pac., Bamberger and Tooele Valley.

SOURCE: Special Reports of Carriers to Statistical Bureau, Executive Committee-Western Traffic Association.

[fol. 583]

ESTIMATED ANNUAL REVENUE BEING SOUGHT BY THE CARRIERS ON SWITCHING IN UTAH BASED ON STUDY PERIOD OF MAY, AUGUST AND NOVEMBER 1953 AS WELL AS FEBRUARY 1954

Type of Switching (1)	Number of Cars (2)	Freight Charges		Revenue Difference (5)
		Actually Assessed (3)	Including Full X-175 Increases (4)	
Non-Absorbed Line Haul	123	$ 811	$ 933	$ 122
Interterminal	381	6 429	7 394	965
Intraterminal	3 198	33 681	38 733	5 052
Intraplant	11 418	48 968	56 300	7 332
Total	15 120	89 889	103 360	13 471

ROADS REPRESENTED: D&RGW, So. Pac., Un. Pac., Utah, West. Pac., Bamberger and Tooele Valley.

SOURCE: Special Reports of Carriers to Statistical Bureau, Executive Committee-Western Traffic Association.

Before The

INTERSTATE COMMERCE COMMISSION

In

Docket No. 31484

HISTORY

OF

GENERAL INCREASES AND REDUCTIONS

beginning

with

General Order No. 28

History

of

General Increases and Reductions

Beginning

with

General Order No. 28

GENERAL ORDER NO. 28

The first of the general rate increases was the Director General's Order No. 28 which increased all rates, interstate and intrastate, effective June 25th, 1918.

EX PARTE NO. 74

Next came Ex Parte No. 74 (58 ICC 220) authorizing increases in interstate rates effective August 26th, 1920. Similar increases became effective August 27th, 1920, on Utah intrastate traffic under authority of Utah P.U.C. Order 325 dated August 24th, 1920.

REDUCTION 1922

This was followed by the reduction in rates on agricultural products effective January 1st, 1922, and authorized by the Public Utilities Commission of Utah in its Order No. 64 of December 16th, 1921. Then came the report of the Interstate Commerce Commission in Reduced Rates, 1922, 68 ICC 676, following which the carriers, without an order, reduced other rates 10% effective July 1st, 1922. The Public Utilities Commission of Utah authorized this reduction in

Utah intrastate rates by its Order No. 9 of June 13th, 1922.

EX PARTE 103

In Ex Parte 103, reported in 178 I.C.C. 539 and 179 I.C.C. 215, the Interstate Commerce Commission authorized emergency charges to be added to the freight rates expiring with March 31st, 1933. No increases were allowed on sugar beets, 1 cent per hundred pounds was allowed on beet pulp, 2 cents per one hundred pounds on molasses 12 cents per ton on limestone and 6 cents per ton on ore and concentrates. These increases were established on interstate traffic effective January 4th, 1932, but the Public Utilities Commission of Utah declined to authorize corresponding increases on Utah intrastate traffic. Thereupon, the carriers filed, with the Interstate Commerce Commission, a petition under Section 13 of the Interstate Commerce Act for an order removing unlawful advantage, preference, prejudice, or discrimination. That case is reported in 186 I.C.C 615 and it is stated at Page 663-4:

> "We find that in view of the rail charges which have become effective interstate in freight rates on classes and commodities here in question under our findings in the fifteen percent case, 1931, Supra, Respondents intrastate rates in Utah on the same classes and commodities, to which no corresponding sur-charges have been added, have resulted and will result in unjust discrimination against interstate commerce, except in the case of intrastate rates on ores and concentrates. We further find that this unjust discrimination shall be removed by

applying to the present intrastate rates in Utah on the said classes and commodities, except ores and concentrates, the same sur-charges as are and for the future may be contemporaneously maintained by respondents in accordance with the findings in our fifteen percent case, 1931, supra, on corresponding interstate traffic.

"Orders will also be entered in accordance with the foregoing findings except where State Commissions directly involved notify us on or before November 1st, 1932, that they will promptly permit the increases herein required. If an order is necessary in any particular it will be issued before or immediately after the above date, and require the establishment of the increased rates on short notice."

After this decision, the Public Utilities Commission of Utah, on October 26th, 1932, authorized the increases except on ore and concentrates in accordance with the Interstate Commerce Commission's findings and they were established effective November 12th, 1932, to expire with March 31st, 1933, in Supplement L to E. B. Boyd's Tariff 252-A, Public Utilities Commission of Utah No. 23.

In 191 I.C.C. 361, the I.C.C. authorized an extension of the Ex Parte 103 emergency charges, except on nonferrous ores and concentrates to and including September 30th, 1933, but the Public Utilities Commission of Utah declined to approve the extention on Utah intrastate traffic. The Utah Lines petitioned the I.C.C. to

reopen the prior proceedings, I.C.C. 25135 (Part 12) and require an extension of the emergency charges on Utah intrastate traffic. The petition was granted by order dated May 18th, 1933. No action was taken until July 25th, 1933, on which date the Commission discontinued the proceedings with the following explanation:

> "The time now intervening prior to the expiration of the surcharges involved is too short to make it possible for any orders which the Commission may enter in these proceedings to become effective and rates in compliance therewith published and thereafter maintained for any substantial period of time, probably not for a period sufficient to justify the expense of tariff publication."

On Utah intrastate traffic, therefore, the Ex Parte 103 emergency charges applied only from November 12th, 1932, to March 31st, 1933, and were:

On Beet Pulp..... 1 cent per 100 pounds,
On Molasses..... 2 cents per 100 pounds,
On Limestone..... 12 cents per ton,
On Coal and Coke..... 6 cents per ton.

None applied on Sugar Beets and Ores and Concentrates.

EX PARTE 115

In Ex Parte 115, reported in 208 I.C.C. 4, the Interstate Commerce Commission authorized certain increases to expire with June 30th, 1936; these increases were established on interstate traffic effective April 18th, 1935.

On the following commodities the increases authorized by

the I.C.C. were:

Sugar Beets	No increase,
Beet Pulp	2 cents per 100 pounds,
Molasses	1 cent per 100 pounds,
Limestone	1 cent per 100 pounds except no increase applied where rate was $1.00 per ton or less.
Coal and Coke	3 to 15 cents per ton.
Copper, Lead and Zinc Ore and concentrates	No increase.

The Public Utilities Commission of Utah declined to authorize corresponding increases in the Utah intrastate rates and again the railroads appealed to the Interstate Commerce Commission. This resulted in the decision in 213 I.C.C. 249, in which the Commission found, at Pages 256-7:

> "We find that the rates published and maintained by respondents on intrastate traffic between points in Utah cause undue and unreasonable advantage, preference and prejudice as between persons and localities in intrastate commerce on the one hand, and interstate commerce on the other hand, and causes an undue, unreasonable, and unjust discrimination against interstate commerce. We further find that the undue and unreasonable preference and prejudice and discrimination can and should be removed by requiring correspondents to cease and desist from publishing and maintaining throughout the State of Utah the said intrastate rates, with the exception of the rates on slack coal, coke, sugar beets, molasses and wet beet pulp and on copper, lead, and zonc ores and

concentrates in carloads, and to publish and maintain in lieu thereof rates equivalent to such rates, plus the said emergency charges as are and for the future may be contemporaneously maintained by respondents in accordance with the findings in emergency freight charges 1935, supra, on corresponding interstate traffic."

Following this decision, the Public Utilities Commission of Utah authorized the increases on Utah intrastate traffic, and they became effective January 15th, 1936.

In 215 I.C.C. 439, the Interstate Commerce Commission authorized a continuance of these emergency charges until December 31st, 1936; and on July 21st, 1936, the Public Utilities Commission of Utah authorized their re-establishment on intrastate traffic to expire the same date. The re-establishment of these emergency charges became effective July 28th, 1936.

EX PARTE 123

In Ex Parte 123 (226 I.C.C. 41) the I.C.C. authorized increases of 10% except on Products of Agriculture and Animals and Products thereof, on which a 5% increase was approved and no increase was authorized on Coal, Coke and Iron Ore. These increases were published effective March 28th, 1938, on interstate traffic and in Case 2040 the Utah Commission authorized the same increases on Utah intrastate traffic except that no increases were approved in line haul rates on Sugar Beets, Molasses, Wet Beet Pulp, Lime Rock, and Ores and Concentrates. The authorized increases were made effective

May 27th, 1938. The carriers made no further efforts to secure intrastate rate increases on the excepted commodities.

EX PARTE 148

In petitions filed with the I.C.C. in December, 1941, the rail carriers sought authority to make certain increases in freight rates. That proceeding was designated by the Commission as Ex Parte 148. The petition was partially approved and such increases as were granted were published effective March 18, 1942, on interstate traffic. On January 9th, 1942, the Utah lines filed a petition with the Utah P.U.C., seeking authority to make effective on intrastate traffic the same increases as authorized by the I.C.C. for application on interstate traffic. In a decision of April 16th, 1942, in Case 2525, such increases were approved by the Utah Commission except on:

Sugar Beets,
Beet Pulp,
Lime Rock,
Molasses,
Ores and Concentrates (including precipitates, matte, slag, speiss and flue dust) of value not exceeding $25.00 per ton of 2,000 pounds.
Coking Coal and Coke.

Again the railroads appealed to the Interstate Commerce Commission and, in its decision in 255 I.C.C. 97, it found at Pages 106-107:

"1. That conditions incident to the intrastate transportation of coking coal and coke between points in Utah are similar to those incident to the transportation of like traffic between points in Utah and points in adjoining States.

"2. That interstate rates on the commodities named in finding 1, increased to the extent authorized in Increased Railway Rates, Fares and Charges, 1942, supra, do not exceed the maximum of reasonableness and intrastate rates on the same traffic between points in Utah increased to the same extent would not exceed the maximum of reasonableness and would increase respondents' revenue on this traffic.

"3. That intrastate rates on the commodities named in finding 1 between points in Utah are not contributing their fair share to respondents' revenues and, by reason of that fact, respondents are not receiving the revenue on this traffic to which they are lawfully entitled.

"4. That, in view of the increases in rates on interstate movements of the commodities named in finding 1, authorized by our findings in Increased Railway Rates, Fares, and Charges, 1942, supra, respondents' intrastate rates on the same commodities, between points in Utah, to which no corresponding increases have been added, have caused and will cause unjust discrimination against interstate commerce.

"5. This unjust discrimination shall be removed by applying to the present intrastate rates between points in Utah on the commodities named in finding 1 the same increases as are, and for the future may be, contemporaneously maintained by respondents in accordance with our finding in Increased Railway Rates, Fares, and Charges, 1942, supra, on corresponding interstate traffic; provided that none of the intrastate rates shall be increased to such an extent that they will exceed the corresponding interstate rates on like traffic for hauls of like distances to or from points in Utah.

"We further find that the intrastate rates in Utah on sugar beets, limerock, sugar-beet molasses, beet pulp, and ores and concentrates (including precipitates, matte, slag, speiss, and flue dust) of value not exceeding $25 a ton of 2,000 pounds, required by the Utah Commission by reason of the refusal of that Commission to authorize or permit increases therein corresponding to those authorized in the interstate rates, are not shown to cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate commerce, on the other, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce."

Before The

INTERSTATE COMMERCE COMMISSION

IN

Docket No. 31484

Copy

of

UTAH COMMISSION'S REPORT AND ORDER DATED MARCH 18, 1953

Relating to

Ex Parte 162-166-168

General Increase Proceedings ICC Docket 30961

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of RAILROADS OPERATING IN THE STATE OF UTAH, for authority to increase their rates, fares and charges within the State of Utah.	Case No. 2525
In the Matter of the Application of RAILROADS OPERATING IN THE STATE OF UTAH, for authority to increase their rates, fares and charges within the State of Utah.	Case No. 2998
	REPORT AND ORDER
In the Matter of the Application of RAILROADS OPERATING IN THE STATE OF UTAH, for authority to increase their freight rates and charges.	Case No. 3168
In the Matter of the Application of RAILROADS OPERATING WITHIN THE STATE OF UTAH, for authority to increase their rates, fares and charges within the State of Utah.	Case No. 3355

Appearances:

A. U. Miner	For	Union Pacific RR Company
Wood R. Worsley	"	Bamberger Railroad Co.
A. D. Moffat	"	Carbon County Railroad Co.
Peter W. Billings	"	Union Pacific RR Co.
Omar O. Victor	"	Utah Mining Association
H. W. Ansell	"	Utah-Idaho Sugar Company
Albert R. Bowen	"	Southern Pacific Co.
E. L. Fischer	"	Amalgamated Sugar Co.
J. K. Richardson	"	Utah Mining Association
Elmer B. Collins	"	Union Pacific RR Co.
W. M. Carey	"	D&RGW RR Co.

E. H. Ellsworth	For	Utah Citizens Rate Ass'n.
Calvin L. Rampton	"	Better Buildings, Inc.
T. C. Taylor	"	Ideal Cement Co.
J. A. Gallaher F. W. Steel	"	Applicants
A. G. MacKenzie Wm. J. O'Connor	"	Utah Metal Mine Operators Ass'n.
C. C. Parsons T. E. Banning	"	Columbia Steel Company
Lowe B. Siddons	"	holly Sugar Co.
Ray B. Needham	"	Bamberger Railroad Co.
Harold P. Fabian	"	Respondents
Otis J. Gibson	"	D&RGW RR
S. N. Cornwall	"	D&RGW RR
A. H. Nebeker	"	Southern Pacific Railroad
Harold R. Mays	"	Salt Lake Retail Fuel Dealers

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By the Commission:

On March 5, 1953, the Public Service Commission of Utah, on its own motion, reopened the above captioned cases for the purpose of entering its order modifying the orders contained in each of said cases.

By their petitions and supplemental petitions filed in the above-entitled cases, the railroads operating in Utah sought adjustments in their rates and charges on Utah intrastate traffic corresponding to charges and adjustments authorized by the Inter-

state Commerce Commission on interstate traffic in 264 ICC 695 referred to as Ex Parte No. 148, 266 ICC 537 referred to as Ex Parte No. 162, 269 ICC 33 referred to as Ex Parte No. 166 and 272 ICC 695 referred to as Ex Parte No. 168, respectively. In Utah Cases No. 2525, 2998 and 3168, this Commission authorized certain increases in rates, fares and charges but did not permit increases to the full extent authorized in the corresponding Interstate Commerce Commission cases. In Utah Case No. 3355, this Commission found and decided that the evidence produced by the applicant railroads did not justify any increases in the rates and charges of the railroads on Utah intrastate traffic.

Upon petition filed by the principal railroads serving Utah, the Interstate Commerce Commission entered upon an investigation under Section 13 of the Interstate Commerce Act concerning the lawfulness of the Utah intrastate freight rates and charges under Docket No. 30961, Utah Intrastate Freight Rates and Charges. All common carriers by railroad operating in Utah were made respondents in the above case.

Hearing in Docket No. 30961 was held in Salt Lake City, Utah, February 25 and 26, 1952. This Commission presented motions to the Interstate Commerce Commission requesting the dismissal of the petition of the railroads. Evidence was introduced by respondents, and by one shipper witness supporting respondents, and by the Public Service Commission of Utah as protestants, and certain shippers and witnesses representing groups of shippers as protestants. Parties to the proceedings in Docket No. 30961 were afforded an opportunity

[Fol. 597]

to file their exceptions to the Examiner's Report, and to present both written and oral argument to the Interstate Commerce Commission, and on January 2, 1953, this Commission received the report of the Interstate Commerce Commission denying this Commission's motions for dismissal and containing the following statement:

> "An order carrying into effect the foregoing findings and conclusions will be entered, unless this Commission is notified by the Utah Commission, within thirty days from the date of the service of this report, that it will permit the increase required to remove the unlawfulness herein found to exist."

By petition dated January 20, 1953, this Commission requested additional time within which to notify the Interstate Commerce Commission as to whether it, (the Utah Commission), would permit increases in intrastate rates in Utah required to remove the unlawfulness found to exist in the report of the Interstate Commerce Commission above mentioned, and on January 27, 1953, the Interstate Commerce Commission issued its order extending the time within which the Public Service Commission of Utah should so notify the Interstate Commerce Commission to March 6, 1953.

The Utah Commission has conferred at length with the principal shippers and representatives of shipper organizations and their attorneys, and its own staff and legal representatives as to the advisable course to pursue under the circumstances above set forth. We have been strongly urged, both in conference and by written petition, by practically all of the shippers who have substantial volumes of Utah intrastate traffic to issue our order in conformity with the findings of the Interstate Commerce Commission in Docket

No. 30961 in order to avoid the freezing of Utah intrastate railroad rates by federal order. Other shippers having a very large volume of Utah interstate traffic notably Geneva Steel Co., did not participate in these proceedings or in Docket No. 30961.

CONCLUSION

In view of all of the circumstances above set forth, we have concluded that an order should issue permitting Utah railroads to increase intrastate rates in Utah in conformity with the findings in Interstate Commerce Commission Docket No. 30961, Utah Intrastate Freight Rates and Charges, with the provision that none of the intrastate rates shall be increased to such an extent as to exceed the corresponding interstate rate on like traffic for hauls of like distances to or from points in Utah. On March 5, 1953, we notified the Interstate Commerce Commission by telegraphic message of our conclusions.

ORDER

NOW THEREFORE, IT IS HEREBY ORDERED, That railroads operating in Utah be and they are hereby authorized, on statutory notice to the Commission and the public, to increase their freight rates and charges on Utah intrastate traffic to conform to the findings of the Interstate Commerce Commission in Docket No. 30961, Utah Intrastate Freight Rates and Charges, provided, however, that no intrastate rate shall be increased to such an extent as to exceed the corresponding interstate rate on like traffic for hauls of like

distances to or from points in Utah, and provided further, that this order relates solely to Interstate Commerce Commission Cases No. Ex Parte 142, Ex Parte 162, Ex Parte 166 and Ex Parte 168, and the corresponding Utah cases.

IT IS FURTHER ORDERED, That the provisions of the orders of this Commission in Cases No. 2525, 2998, 3168 and 3355 are superseded and modified by this order.

IT IS FURTHER ORDERED, That jurisdiction be and is hereby retained by the Utah Commission for the purpose of determining, if need be, the lawfulness of any and all rates and charges resulting from this order.

Dated at Salt Lake City, Utah, this 18th day of March, 1953.

/s/ Hal S. Bennett
Chairman

(S E A L)

/s/ Stewart M. Hanson
Commissioner

Attest:

/s/ Donald Hacking
Commissioner

/s/ F. A. Yeamans
Secretary

STATEMENT SHOWING EFFECTIVE DATES

OF

EX PARTE 175 INCREASES

ON

INTERSTATE AND INTRASTATE TRAFFIC

APPLICATION	X-175 2 PERCENT INCREASE EFFECTIVE	X-175-A 6 PERCENT INCREASE EFFECTIVE	X-175-B 15 PERCENT INCREASE EFFECTIVE
Interstate	April 4, 1951	August 28, 1951	May 2, 1952
Arizona	No Increase	No Increase	No Increase
California		*January 14, 1952	*November 18, 1953
Colorado		*June 30, 1952	December 14,1953
Idaho		No Increase	No Increase
Montana		April 4, 1952	*January 28, 1953
Nevada		September 29, 1951	*June 28, 1952
New Mexico		*December 23, 1951	No Increase
Oregon		*February 1, 1952	March 25, 1953
Utah		No Increase	No Increase
Washington		December 28, 1951	November 26, 1952
Wyoming		*October 20, 1951	March 3, 1954

* Subject to some exceptions or limitations on certain commodities.

[fol. 600A] RESPONDENTS' EXHIBIT No. 6

THE FOLLOWING TABLE SHOWS THE TOTAL TONS OF VARIOUS COMMODITIES ORIGINATING ON THE D&RGW RR AND UPRR IN THE STATE OF UTAH DURING THE YEAR 1953 AND THEIR PERCENTAGE RELATION TO THE TOTAL TONS OF ALL CARLOAD TRAFFIC ORIGINATED BY THOSE LINES IN UTAH

COLUMN: * 1		2	3
No.	Commodity	Total Tons Originated 1953	Percent of Total Tons Originated 1953 (All Commodities)
1	Wheat	214,365	1.41
203	Cattle and Calves SD	40,283	0.27
209	Sheep and Goats DD	46,763	0.31
305	Bituminous Coal	3,035,376	19.95
307	Coke	254,189	1.67
309	Iron Ore	5,340,210	35.10
315	Lead Ore and Concentrates	447,968	2.94
319	Ores and Concentrates NOS	377,653	2.48
323	Clay and Bentonite	150,247	0.99
327	Gravel and Sand NOS	78,105	0.51
329	Stone and Rock, Broken Crushed and Ground	136,106	0.89
331	Fluxing Stone and Dolomite	525,678	3.45
501	Gasoline	97,357	0.64
503	Fuel and Road Oil	262,504	1.73
583	Manufactured Iron and Steel	773,003	5.08
633	Cement	109,428	0.72
759	Sugar	63,821	0.42
773	Feed Animal and Poultry	68,457	0.45
795	Waste Materials for Remelting NOS	21,548	0.14
	TOTAL	12,043,061	79.15

960 GRAND TOTAL All Carload Freight Originated: 15,215,979 Tons

CARRIERS REPORTING: D&RGW RR and UP RR.

SOURCE: Annual Report Form "A" of State of Utah Schedule 941 Revenue Freight Carried During the Year 1953.

Page 1

STATEMENT SHOWING MOVEMENT IN CARLOADS OF VARIOUS COMMODITIES SHOWN BELOW, INTRASTATE VS. INTERSTATE TO DESTINATIONS IN UTAH TERMINATED BY THE BAM, D&RGW, SLG&W, SP, TV, UTAH AND WP DURING MAY, AUGUST, NOVEMBER 1953, AND FEBRUARY 1954, A.D BY THE UP FOR THE FULL YEAR 1953

COLUMN:	1	2	3	4
Line	Commodity	Road	Number of Carloads: Intrastate	Interstate
1	Cattle and Calves	D&RGW	53	56
2		SP	-	21
3		UP	403	899
4	Total		456	976
5	Cement	BAM	47	-
6		D&RGW	13	5
7		UP	1648	18
8		WP	1	-
9	Total		1709	23
10	Clay and Bentonite	BAM	-	15
11		D&RGW	135	42
12		UP	1355	333
13		WP	5	3
14	Total		1495	393
15	Coal	BAM	244	60
16		D&RGW	9984	2135
17		SLG&W	141	-
18		TV	169	-
19		UP	4455	4703
20		UTAH	1	-
21		WP	129	-
22	Total		15123	6898
23	Coke	BAM	2	-
24		D&RGW	148	276
25		TV	147	2
26		UP	838	2125
27	Total		1135	2403
28	Feed, Animal and Poultry, NOS	D&RGW	76	-
29		UP	483	528
30	Total		559	528
31	Fuel, Road and Petroleum Oil	BAM	27	-
32		D&RGW	651	-
33		UP	4746	13
34		UTAH	54	-
35		WP	21	-
36	Total		5499	13
37	Gasoline	BAM	67	2
38		D&RGW	392	1
39		UP	788	70
40		WP	74	-
41	Total		1321	73
42	Gravel and Sand	BAM	2	1
43		D&RGW	250	3
44		SP	-	14
45		TV	1	-
46		UP	581	147
47		UTAH	42	-
48		WP	9	-
49	Total		885	165

Note:

[fol. 602]

Page 2

STATEMENT SHOWING MOVEMENT IN CARLOADS OF VARIOUS COMMODITIES SHOWN BELOW, INTRASTATE VS. INTERSTATE TO DESTINATIONS IN UTAH TERMINATED BY THE RAH, D&RGW, SLG&W, SP, TV, UTAH AND WP DURING MAY, AUGUST, NOVEMBER 1953, AND FEBRUARY 1954, AND BY THE UP FOR THE FULL YEAR 1953

COLUMN:	1	2	3	4
Line	Commodity	Road	Number of Carloads: Intrastate	Number of Carloads: Interstate
1	Iron Ore	D&RGW	49	79
2		TV	1	-
3		UP	58266	1
4	Total		58316	80
5	Manufactured Iron and Steel	D&RGW	350	175
6		UP	546	1367
7		UTAH	-	3
8		WP	4	33
9	Total		900	1578
10	Ores and Concentrates	D&RGW	2708	83
11		TV	119	378
12		UP	1643	354
13	Total		4470	815
14	Sheep and Goats, DD	D&RGW	166	215
15		SP	-	18
16		UP	1856	540
17		WP	86	-
18	Total		2108	773
19	Stone and Rock	D&RGW	34	-
20		UP	1499	87
21	Total		1533	87
22	Sugar	D&RGW	83	4
23		UP	240	612
24		WP	-	6
25	Total		323	622
26	Waste Material for remelting	D&RGW	9	33
27		TV	30	121
28		UP	47	47
29		WP	2	-
30	Total		88	201
31	Wheat	D&RGW	3	-
32		UP	895	6914
33	Total		898	6914

Pages 454 through 470 (Respondents' Exhibits Nos. 8 through 24) are extremely reduced and cannot be photographed at a reduction requisite even for reading with effort, and so have not been included here.

STATEMENT DEALING WITH INTRASTATE RAIL MOVEMENT OF CATTLE, SINGLE DECK,
TO AND FROM POINTS IN UTAH DURING MAY, AUGUST, NOVEMBER 1953 AND FEBRUARY 1954

COLUMN:	1	2		3	4	5	6	7	8		9
LINE	From	To		Distance (Miles)	Number Cars	Rate (Per Car) (Cents)	As Collected Weight (Pounds)	As Collected Charges (Dollars)	Basis for Revenue Sought X-168 (Per Car)	X-175-B	Total Revenue
	INTRASTATE										
1	Honeyville, Utah	Ogden,	Utah	30	1	2503	27,200	25.03	2503	Plus 15%	28.78
2	No. Salt Lake, Utah	"		31	4	2346	94,100	93.84	2346	Plus 15%	107.92
3	Springville, Utah	"		86	1	4471	28,100	44.71	4471	Plus 15%	51.42
4	Nephi, Utah	"		126	2	5791	58,200	115.82	5791	Plus 15%	133.19
5	Delta, Utah	"		171	4	6185	88,000	247.40	6185	Plus 15%	284.51
6	Logan, Utah	"		74	1	3637	30,500	36.37	3637	Plus 15%	41.83
7	Ogden, Utah	Spanish Fork,	Utah	92	3	4285	66,000	128.55	4285	Plus 15%	147.83
8	St. John, Utah	Starr,	Utah	126	3	6808	66,000	204.24	6808	Plus 15%	234.88
9	No. Salt Lake, Utah	Delta,	Utah	140	1	6185	22,000	61.85	6185	Plus 15%	71.13
10	Heber, Utah	"		129	2	10093	42,000	201.86	10093	Plus 15%	232.14
11	Spanish Fork, Utah	Soldier's Summit,	Utah	48	2	3577	48,000	72.00	3577	Plus 15%	82.80
12	"	Scofield,	Utah	70	2	4024	48,000	80.48	4024	Plus 15%	92.55
13	Price, Utah	Salina,	Utah	149	4	5813	88,000	233.00	5813	Plus 15%	267.95
14	Lehi, Utah	"		122	1	5365	22,000	54.00	5365	Plus 15%	62.10
15	Ogden, Utah	"		187	7	6260	154,000	438.00	6260	Plus 15%	503.70
16	Soldier's Summitt, Utah	Spanish Fork,	Utah	48	2	3577	40,000	72.00	3577	Plus 15%	82.80
17	Salina, Utah	Heber,	Utah	132	1	5663	24,000	57.00	5663	Plus 15%	65.55
18	Price, Utah	Heber,	Utah	108	6	5067	132,000	304.00	5067	Plus 15%	349.60
19	Salina, Utah	Roper,	Utah	148	2	8060	48,000	161.00	8060	Plus 15%	185.15
20	Ogden, Utah	Trenton,	Utah	57	1	3678	22,000	36.78	3678	Plus 15%	42.30
21	"	Huslers,	Utah	40	2	2348	48,000	46.96	2348	Plus 15%	54.00
22	"	Delta,	Utah	171	1	6185	66,000	61.85	6185	Plus 15%	71.13
23	Wahsatch, Utah	Brigham City,	Utah	86	6	4620	132,000	277.20	4620	Plus 15%	318.78
24	Delta, Utah	Manship,	Utah	224	1	9240	22,000	92.40	9240	Plus 15%	106.26
25	"	Nephi,	Utah	61	2	5550	48,000	111.00	5550	Plus 15%	127.65
26	Castle Rock, Utah	Ogden,	Utah	57	1	5321	24,000	53.21	5321	Plus 15%	61.19
27	Delta, Utah	"		171	15	8272	392,600	1,240.80	8272	Plus 15%	1,421.92
28	Springville, Utah	"		86	1	5713	24,000	57.13	5713	Plus 15%	65.70
29	Manship, Utah	"		53	3	4851	75,000	145.53	4851	Plus 15%	167.36
30	Fillmore, Utah	"		203	1	10876	24,000	108.76	10876	Plus 15%	125.07
31	Spanish Fork, Utah	"		92	1	5713	24,800	57.13	5713	Plus 15%	65.70

STATEMENT DEALING WITH INTRASTATE RAIL MOVEMENT OF CATTLE, Single Dook,
TO AND FROM POINTS IN UTAH DURING MAY, AUGUST, NOVEMBER 1953 AND FEBRUARY 1954

COLUMN:	1	2	3	4	5	6	7	8		9
LINE	From	To	Distance (Miles)	Number Cars	Rate (Per Car) (Cents)	As Collected Weight (Pounds)	As Collected Charges (Dollars)	Basis for Revenue Sought X-168 (Per Car)	X-175-B	Total Revenue
	INTRASTATE									
1	Honeyville, Utah	No. Salt Lake, Utah	61	1	4862	26,600	48.62	4862	Plus 15%	55.91
2	Ogden, Utah	"	31	1	2346	24,000	23.46	2346	Plus 15%	26.98
3	Wahsatch, Utah	"	96	1	6416	24,000	64.16	6416	Plus 15%	73.78
4	Delta, Utah	"	140	6	8272	147,400	496.32	8272	Plus 15%	570.77
5	Park City, Utah	"	99	1	5288	26,600	52.88	5288	Plus 15%	60.81
6	Lewiston, Utah	"	121	1	6227	26,600	62.27	6227	Plus 15%	71.61
7	Cedar City, Utah	"	280	5	10095	118,700	504.75	10095	Plus 15%	580.46
8	Nephi, Utah	Salt Lake City, Utah	100	1	7747	22,000	77.47	7747	Plus 15%	89.09
9	Delta, Utah	"	135	2	8685	48,000	173.70	8685	Plus 15%	199.76
10	"	Huslers, Utah	145	5	8685	120,000	434.25	8685	Plus 15%	499.39
11	Thompson, Utah	No. Salt Lake, Utah	222	1	12598	26,000	126.00	12598	Plus 15%	144.90
12	Price, Utah	Ogden, Utah	163	6	10956	138,000	647.00	10956	Plus 15%	755.55
13	Kenn, Utah	"	201	1	8294	22,000	83.00	8294	Plus 15%	95.45
14	Heber, Utah	"	107	18	4851	420,000	873.00	4851	Plus 15%	1,003.95
15	Honeyville, Utah	No. Salt Lake, Utah	61	1	4459	26,600	44.59	4459	Plus 15%	51.28

Tariff Authorities:

UPRR 7006-A
UPRR 6085-C, ICC 5323
LUPB 1-Q, Agent J. A. Roubinek's ICC 4.
DRGW 4849-G
UPRR 2303-E
UPRR 6010-D

Distances:

UPRR 4000-A, ICC 5323
DRGW 5024-E, ICC 623

/ Combination Rate.

[fol. 631]

STATEMENT DEALING WITH INTERSTATE RAIL MOVEMENT OF CATTLE, SINGLE DECK
TO AND FROM POINTS IN UTAH DURING MAY, AUGUST, NOVEMBER 1953 AND FEBRUARY 1954

COLUMN:	1	2	3	4	5	6	7
LINE	From	To	Distance (Miles)	Number Cars	Rate (Per Cwt) (Cents)	As Collected Weight (Pounds)	As Collected Charges (Dollars)
	INTERSTATE						
1	Carter, Wyo.	Ogden, Utah	118	2	32½ Plus 15%	43,200	161.46
2	Opal, Wyo.	"	170	6	36½ Plus 15%	114,900	482.30
3	Kemmerer, Wyo.	"	185	1	38½ Plus 15%	22,000	97.41
4	Pebble, Ida.	Honeyville, Utah	102	4	31½ Plus 15%	88,000	318.78
5	Carter, Wyo.	Layton, Utah	132	3	34 Plus 15%	56,200	219.74
6	Mackay, Ida.	Delta, Utah	414	1	56 Plus 15%	22,000	141.68
7	Caldwell, Ida.	Sugar Works Spur, Utah	385	1	54½ Plus 15%	21,100	132.25
8	Idaho Falls, Ida.	"	184	1	38½ Plus 15%	27,100	119.99
9	Darby, Mont.	Ogden, Utah	568	1	66½ Plus 15%	22,000	168.25
10	Durham, Colo.	Richfield, Utah	333	1	8294 PC Plus 15%	22,000	95.00
11	"	Green River, Utah	103	1	5008 PC Plus 15%	22,000	58.00
12	"	Springville, Utah	244	2	54½ Plus 15%	44,000	275.77
13	Butte, Mont.	Sugar Works Spur, Utah	397	1	56 Plus 15%	22,000	141.68
14	Soda Springs, Ida.	Corinne, Utah	141	3	34 Plus 15%	55,000	215.05
15	Opal, Wyo.	Ogden, Utah	170	10	10173 PC Plus 15%	219,900	1,052.91
16	McCammon, Ida.	"	111	1	7043 PC Plus 15%	28,100	80.99
17	Gooding, Ida.	"	258	1	53 Plus 15%	26,600	162.13
18	Malad, Ida.	"	73	10	5713 PC Plus 15%	288,700	657.00
19	Twin Falls, Ida.	"	251	3	53 Plus 15%	60,000	365.70
20	Evanston, Wyo.	No. Salt Lake, Utah	107	1	6416 PC Plus 15%	24,000	73.77
21	Creston, Wyo.	"	312	5	57 Plus 15%	117,100	767.59
22	Preston, Ida.	"	131	1	6800 PC Plus 15%	26,600	78.20
23	Malad, Ida.	"	104	1	5713 PC Plus 15%	31,600	65.70
24	Grand Island, Neb.	Ogden, Utah	846	2	97 Plus 15%	37,700	420.54
25	Weston, Ida.	No. Salt Lake, Utah	96	1	5008 PC Plus 15%	24,000	57.59

Tariff Authorities:
PSFB 220-D, Agent J. P. Haynes' ICC 1514.
DRGW 6776-F, ICC 951
UPRR 6085-C, ICC 5323.

Distances:
DRGW 5024-D, ICC 623
UPRR 4000-A, ICC 5325
NP 1500-I, ICC 2759

PC - Per Car

426

STATEMENT DEALING WITH INTRASTATE RAIL MOVEMENT OF SHEEP, DOUBLE DECK TO AND FROM POINTS IN UTAH DURING MAY, AUGUST, NOVEMBER 1953 AND FEBRUARY 1954

COLUMN:	1	2	3	4	5	6	7	8	9
LINE	From	To	Distance (Miles)	Number Cars	Rate (Per Car) (Cents)	As Collected Weight (Pounds)	As Collected Charges (Dollars)	Basis for Revenue Sought X-168	Basis for Revenue Sought X-175-B	Total Revenue
1	Garland, Utah	Ogden, Utah	41	1	3913	20,000	39.13	3913 PC	Plus 15%	45.00
2	Delta, Utah	Huslers, Utah	139	2	8685	40,000	173.70	8685 PC	Plus 15%	199.76
3	Wahsatch, Utah	Ogden, Utah	65	3	6416	60,000	192.48	6416 PC	Plus 15%	221.35
4	St. John, Utah	Ogden, Utah	84	1	7875	20,000	78.75	7875 PC	Plus 15%	90.56
5	Ogden, Utah	Salt Lake City, Utah	36	2	3130	40,000	62.60	3130 PC	Plus 15%	71.99
6	No. Salt Lake, Utah	Salt Lake City, Utah	5	1	1126	20,000	11.26	1126 PC	Plus 15%	12.95
7	No. Salt Lake, Utah	Henefer, Utah	67	1	3599	20,000	35.99	3599 PC	Plus 15%	41.39
8	Wahsatch, Utah	Layton, Utah	79	3	4774	60,000	143.22	4774 PC	Plus 15%	164.70
9	Cedar City, Utah	Kaysville, Utah	294	1	12206	20,000	122.06	12206 PC	Plus 15%	140.37
10	Ogden, Utah	Huslers, Utah	40	2	3130	40,000	62.60	3130 PC	Plus 15%	71.99
11	No. Salt Lake, Utah	Huslers, Utah	9	2	1126	40,000	22.52	1126 PC	Plus 15%	25.90
12	Wanship, Utah	Ogden, Utah	53	1	4851	20,000	48.51	4851 PC	Plus 15%	55.79
13	Kema, Utah	Ogden, Utah	201	2	8294	40,000	166.00	8294 PC	Plus 15%	190.90
14	Central, Utah	Ogden, Utah	210	7	8451	142,000	592.00	8451 PC	Plus 15%	680.80
15	Salina, Utah	Ogden, Utah	187	1	8060	20,000	81.00	8060 PC	Plus 15%	93.15
16	Sigurd, Utah	Ogden, Utah	197	1	8294	20,000	82.94	8294 PC	Plus 15%	95.38
17	Elsinore, Utah	Ogden, Utah	213	2	8451	40,000	169.02	8451 PC	Plus 15%	194.37
18	Heber, Utah	Ogden, Utah	107	4	4851	80,000	194.04	4851 PC	Plus 15%	223.15
19	Gunnison, Utah	Salt Lake City, Utah	137	1	7748	20,000	77.48	7748 PC	Plus 15%	89.10
20	Lehi, Utah	Salt Lake City, Utah	28	5	3130	100,000	156.50	3130 PC	Plus 15%	179.98
21	Price, Utah	Ogden, Utah	163	1	10878	18,000	108.78	10878 PC	Plus 15%	125.10
22	Ephraim, Utah	Ogden, Utah	154	1	7668	20,000	76.68	7668 PC	Plus 15%	88.18
23	Richfield, Utah	Ogden, Utah	205	1	8294	20,000	82.94	8294 PC	Plus 15%	95.38
24	Layton, Utah	Jericho, Utah	120	7	5221	140,000	372.61	5221 PC	Plus 15%	428.50
25	Juab, Utah	Milford, Utah	120	6	4225	120,000	253.50	4225 PC	Plus 15%	291.53
26	Lakeside, Utah	Echo, Utah	87	1	6182	20,000	61.82	6182 PC	Plus 15%	71.09
27	Lakeside, Utah	Wahsatch, Utah	112	9	6728	180,000	605.52	6728 PC	Plus 15%	696.35
28	Wanship, Utah	Ogden, Utah	53	3	3599	60,000	107.97	3599 PC	Plus 15%	124.17
29	Wendover, Utah	Timpie, Utah	78	1	7043	20,000	70.43	7043 PC	Plus 15%	80.99
30	Wahsatch, Utah	Timpie, Utah	143	72	6409	1,440,000	4614.48	6409 PC	Plus 15%	5306.65

STATEMENT DEALING WITH INTRASTATE RAIL MOVEMENT OF SHEEP, DOUBLE DECK
TO AND FROM POINTS IN UTAH DURING MAY, AUGUST, NOVEMBER 1953 AND FEBRUARY 1954

COLUMN:	1	2	3	4	5	6	7	8		9
LINE	From	To	Distance (Miles)	Number Cars	Rate (Per Car) (Cents)	As Collected Weight (Pounds)	As Collected Charges (Dollars)	Basis for Revenue Sought X-168	X-175-B	Total Revenue
1	Wanship, Utah	Timpie, Utah	131	2	6260	40,000	125.20	6260 PC	Plus 15%	143.98
2	Morgan, Utah	Wendover, Utah	183	11	7600	220,000	836.00	7600 PC	Plus 15%	961.40
3	Black Rock, Utah	Manti, Utah	234	10	9240	200,000	924.00	9240 PC	Plus 15%	1062.60
4	Black Rock, Utah	Pines, Utah	181	14	7601	272,000	1064.14	7601 PC	Plus 15%	1223.76
5	Milford, Utah	Gilluly, Utah	216	7	9091	140,000	636.00	9091 PC	Plus 15%	731.40
6	Milford, Utah	Indianola, Utah	211	6	8942	120,000	536.00	8942 PC	Plus 15%	616.40
7	Delta, Utah	Indianola, Utah	138	7	34 cwt	140,000	476.00	34 cwt	Plus 15%	547.40
8	Wahsatch, Utah	Richfield, Utah	273	1	45 cwt	20,000	90.00	45 cwt	Plus 15%	103.50
9	Hillside, Utah	Soldier Summit, Utah	72	11	4322	220,000	475.00	4322 PC	Plus 15%	546.25
10	Salina, Utah	Cisco, Utah	263	2	7452	40,000	149.00	7452 PC	Plus 15%	171.35
11	Lehi, Utah	Soldier Summit, Utah	66	7	4024	140,000	282.00	4024 PC	Plus 15%	324.30
12	Ephraim, Utah	Thistle, Utah	53	4	3875	80,000	155.00	3875 PC	Plus 15%	178.25
13	Fairview, Utah	Gunnison, Utah	41	5	3577	100,000	179.00	3577 PC	Plus 15%	205.85
14	Ogden, Utah	Gunnison, Utah	174	1	7748	20,000	77.00	7748 PC	Plus 15%	88.55
15	Indianola, Utah	Gilluly, Utah	34	6	3428	120,000	205.68	3428 PC	Plus 15%	236.53
16	Ogden, Utah	Springville, Utah	86	1	4471	20,000	44.71	4471 PC	Plus 15%	51.42
17	Soldier Summit, Utah	Hillside, Utah	74	12	4322	240,000	519.00	4322 PC	Plus 15%	596.85
18	Heber, Utah	Hillside, Utah	59	11	3875	220,000	426.00	3875 PC	Plus 15%	489.90
19	Hillside, Utah	Heber, Utah	59	8	3875	160,000	310.00	3875 PC	Plus 15%	356.50
20	Timpie, Utah	Wahsatch, Utah	143	145	6409	2,320,000	9293.05	6409 PC	Plus 15%	1068.70
21	Timpie, Utah	Emory, Utah	128	38	6409	740,000	2435.42	6409 PC	Plus 15%	2800.73
22	Lakeside, Utah	Henefer, Utah	83	27	5477	540,000	1478.79	5477 PC	Plus 15%	1700.61
23	Low, Utah	Henefer, Utah	134	4	7123	80,000	284.92	7123 PC	Plus 15%	327.66
24	Lucin, Utah	Henefer, Utah	139	3	7668	60,000	230.04	7668 PC	Plus 15%	264.55
25	Wendover, Utah	Henefer, Utah	194	14	8700	280,000	1218.00	8700 PC	Plus 15%	1400.70
26	Wendover, Utah	Devils Slide, Utah	190	6	8700	120,000	522.00	8700 PC	Plus 15%	600.30
27	Wendover, Utah	Morgan, Utah	183	7	7600	140,000	532.00	7600 PC	Plus 15%	611.80
28	Lucin, Utah	Peterson, Utah	120	12	7355	240,000	882.60	7355 PC	Plus 15%	1014.99
29	Timpie, Utah	Coalville, Utah	123	11	6260	220,000	688.60	6260 PC	Plus 15%	791.89
30	Wendover, Utah	Coalville, Utah	203	12	8921	240,000	991.20	8921 PC	Plus 15%	1139.88

STATEMENT DEALING WITH INTRASTATE RAIL MOVEMENT OF SHEEP, DOUBLE DECK
TO AND FROM POINTS IN UTAH DURING MAY, AUGUST, NOVEMBER 1953 AND FEBRUARY 1954

COLUMN:	1	2	3	4	5	6	7	8	9
LINE	From	To	Distance (Miles)	Number Cars	Rate (Per Car) (Cents)	As Collected Weight (Pounds)	As Collected Charges (Dollars)	Basis for Revenue Sought X-168 X-175-B	Total Revenue
1	Wendover, Utah	Keetley, Utah	227	10	8921	200,000	892.10	8921 PC Plus 15%	1025.92
2	Faust, Utah	Ogden, Utah	61	6	4147	120,000	248.82	4147 PC Plus 15%	286.14
3	Ogden, Utah	Salt Lake City, Utah	36	2	2346	40,000	46.92	2346 PC Plus 15%	53.96
4	Garfield, Utah	Wahsatch, Utah	117	27	3913	540,000	1056.51	3913 PC Plus 15%	1214.99
5	St. John, Utah	Wahsatch, Utah	149	23	4618	460,000	1062.14	4618 PC Plus 15%	1221.46
6	Faust, Utah	Wahsatch, Utah	162	19	5008	380,000	951.52	5008 PC Plus 15%	1094.25
7	Faust, Utah	Henefer, Utah	133	13	4471	260,000	581.23	4471 PC Plus 15%	668.41
8	Faust, Utah	Devils Slide, Utah	129	12	4471	240,000	536.52	4471 PC Plus 15%	617.00
9	Faust, Utah	Morgan, Utah	122	11	4471	220,000	491.81	4471 PC Plus 15%	565.58
10	Sandy, Utah	Brigham, Utah	70	7	2973	140,000	208.11	2973 PC Plus 15%	239.33
11	Wahsatch, Utah	No. Salt Lake, Utah	96	9	3913	180,000	352.17	3913 PC Plus 15%	405.00
12	Black Rock, Utah	Nephi, Utah	111	13	3913	260,000	508.69	3913 PC Plus 15%	584.99
13	Black Rock, Utah	Juab, Utah	97	13	3913	260,000	508.69	3913 PC Plus 15%	584.99
14	Black Rock, Utah	Soma, Utah	80	8	3913	160,000	313.04	3913 PC Plus 15%	360.00
15	Coalville, Utah	St. John, Utah	129	20	4069	400,000	813.80	4069 PC Plus 15%	935.87
16	Castle Rock, Utah	Faust, Utah	154	12	5008	240,000	600.96	5008 PC Plus 15%	691.10
17	Peterson, Utah	Faust, Utah	114	1	4471	20,000	44.71	4471 PC Plus 15%	51.42
18	Coalville, Utah	Faust, Utah	142	41	4471	820,000	1833.11	4471 PC Plus 15%	2108.08
19	Wanship, Utah	Faust, Utah	150	28	4851	560,000	1358.28	4851 PC Plus 15%	1562.02
20	Atkinson, Utah	Faust, Utah	157	13	4851	260,000	630.63	4851 PC Plus 15%	725.22
21	Coalville, Utah	Jericho, Utah	180	16	5633	320,000	901.28	5633 PC Plus 15%	1036.47
22	Peterson, Utah	Jericho, Utah	152	5	5633	100,000	281.65	5633 PC Plus 15%	323.90
23	Ogden, Utah	Delta, Utah	171	1	6103	22,100	61.03	6103 PC Plus 15%	70.18
24	Spanish Fork, Utah	Black Rock, Utah	145	20	4547	400,000	909.40	4547 PC Plus 15%	1045.81
25	Payson, Utah	Black Rock, Utah	137	13	4322	317,200	629.33	4322 PC Plus 15%	723.73
26	Nephi, Utah	Black Rock, Utah	111	23	3913	460,000	899.99	3913 PC Plus 15%	1034.99
27	Nephi, Utah	Milford, Utah	134	53	4225	1,060,000	2239.25	4225 PC Plus 15%	2575.14
28	Payson, Utah	Coalville, Utah	145	7	4471	140,000	312.97	4471 PC Plus 15%	359.92
29	Garfield, Utah	Coalville, Utah	97	4	3913	80,000	156.52	3913 PC Plus 15%	180.00
30	Faust, Utah	Coalville, Utah	142	11	4471	220,000	455.40	4471 PC Plus 15%	523.71

STATEMENT DEALING WITH INTRASTATE RAIL MOVEMENT OF SHEEP, DOUBLE DECK
TO AND FROM POINTS IN UTAH DURING MAY, AUGUST, NOVEMBER 1953 AND FEBRUARY 1954

COLUMN:	1		2		3	4	5	6	7	8		9
LINE	From		To		Distance (Miles)	Number Cars	Rate (Per Car) (Cents)	As Collected Weight (Pounds)	As Collected Charges (Dollars)	Basis for Revenue Sought X-168	X-175-B	Total Revenue
1	Jericho,	Utah	Coalville,	Utah	180	24	5633	495,200	1351.92	5633 PC	Plus 15%	1554.71
2	Atkinson,	Utah	Coalville,	Utah	15	2	2347	40,000	46.94	2347 PC	Plus 15%	53.98
3	Faust,	Utah	Wanship,	Utah	150	20	4851	400,000	970.20	4851 PC	Plus 15%	1115.73
4	Nephi,	Utah	Atkinson,	Utah	186	10	5813	200,000	581.30	5813 PC	Plus 15%	668.50
5	Faust,	Utah	Atkinson,	Utah	157	11	4851	220,000	533.61	4851 PC	Plus 15%	613.65
6	St. John,	Utah	Keetley,	Utah	153	19	5165	380,000	981.35	5165 PC	Plus 15%	1128.55
7	Faust,	Utah	Keetley,	Utah	166	11	5165	220,000	568.15	5165 PC	Plus 15%	653.37
8	Henefer,	Utah	Ogden Sugar Works Spur	Utah	39	25	3599	500,000	899.75	3599 PC	Plus 15%	1034.71
9	Faust,	Utah	Ogden Sugar Works Spur	Utah	100	1	4147	20,000	41.47	4147 PC	Plus 15%	47.69
10	Milford,	Utah	Cisco,	Utah	373	3	✓ 11923	60,000	358.00	11923 PC	Plus 15%	411.70
11	Black Rock,	Utah	Colton,	Utah	210	17	✓ 8644	322,000	1469.00	8644 PC	Plus 15%	1689.35
12	Milford,	Utah	Colton,	Utah	233	3	✓ 9389	60,000	282.00	9389 PC	Plus 15%	324.30
13	Nephi,	Utah	Soldier Summit,	Utah	118	3	5365	60,000	208.00	5365 PC	Plus 15%	239.20
14	Wendover,	Utah	Wahsatch,	Utah	153	65	8700	1,920,000	5655.00	8700 PC	Plus 15%	6503.25
15	No. Salt Lake,	Utah	Wahsatch,	Utah	96	13	3913	260,000	508.69	3913 PC	Plus 15%	584.99
16	Milford,	Utah	Nephi,	Utah	134	21	4225	420,000	887.25	4225 PC	Plus 15%	1020.34
17	Milford,	Utah	Juab,	Utah	120	11	4225	220,000	464.75	4225 PC	Plus 15%	534.46
18	Wahsatch,	Utah	Faust,	Utah	162	92	5008	1,850,000	4607.36	5008 PC	Plus 15%	5298.46
19	Henefer,	Utah	Faust,	Utah	133	37	4471	740,000	1654.27	4471 PC	Plus 15%	1902.41
20	Park City,	Utah	Faust,	Utah	165	8	5165	160,000	413.20	5165 PC	Plus 15%	475.18
21	Ogden,	Utah	Lund,	Utah	279	1	9078	20,000	90.78	9078 PC	Plus 15%	104.40
22	Warner,	Utah	Coalville,	Utah	117	22	4070	440,000	895.40	4070 PC	Plus 15%	1029.71
23	Lehi,	Utah	Wanship,	Utah	120	12	4173	240,000	575.87	4173 PC	Plus 15%	662.25
24	Low,	Utah	Ogden,	Utah	98	2	6495	40,000	129.90	6495 PC	Plus 15%	149.39

Tariff Authorities:
UPRR 7006-A
UPRR 2303-E
UPRR 6085-C, ICC 5232
D&RGW 4849-G
UPRR 6012-C
WPRR 71-H

LWFB 1-Q, Agent J. A. Roubinek's ICC No. 4
PSC 220-D, Agent J. P. Haynes' ICC 1514
PSC 222-A, Agent J. P. Haynes' ICC 1392

Cwt. - Per 100 pounds
✓ - Combination rate

Distances:
UPRR 4000-A, ICC 5325
DRGW 5024-E, ICC 623
SP 420-D, ICC 4687
WP 39-F, ICC 449

[fol. 623A]

477

STATEMENT DEALING WITH INTERSTATE RAIL MOVEMENT OF SHEEP, DOUBLE DECK
TO AND FROM POINTS IN UTAH DURING MAY, AUGUST, NOVEMBER 1953 AND FEBRUARY 1954

COLUMN:	1	2		3	4	5	6	7
LINE	From	To		Distance (Miles)	Number Cars	Rate (Per Cwt) (Cents)	As Collected Weight (Pounds)	As Collected Charges (Dollars)
1	Montrose,	Colo. Black Rock,	Utah	461	6	59½ Plus 15%	120,000	821.10
2	Ketchum,	Ida. Ogden,	Utah	311	1	48½ Plus 15%	20,000	111.55
3	Spencer,	Ida. Washakie,	Utah	262	3	45 Plus 15%	60,000	310.50
4	Turlock,	Calif. Wellsville,	Utah	839	1	82½ Plus 15%	24,400	231.50
5	Montrose,	Colo. Cisco,	Utah	128	29	5321 PC Plus 15%	580,000	1775.00
6	Debeque,	Colo. Thompson,	Utah	112	3	5008 PC Plus 15%	60,000	173.00
7	Montrose,	Colo. Thompson,	Utah	151	19	5791 PC Plus 15%	380,000	1265.00
8	Montrose,	Colo. Green River,	Utah	178	37	6260 PC Plus 15%	740,000	2664.00
9	Aspen,	Colo. Mounds,	Utah	284	8	7668 PC Plus 15%	160,000	705.00
10	Minturn,	Colo. Woodside,	Utah	279	8	7511 PC Plus 15%	160,000	691.00
11	Minturn,	Colo. Price,	Utah	317	1	7981 PC Plus 15%	20,000	92.00
12	Elko,	Nev. Gunnison,	Utah	401	1	56 Plus 15%	20,000	128.80
13	Lewiston,	Ida. Elsinore,	Utah	1048	2	93½ Plus 15%	40,000	430.10
14	Elko,	Nev. Salt Lake City,	Utah	227	1	51 Plus 15%	23,900	140.17
15	Soda Springs,	Ida. Ogden,	Utah	156	5	8138 PC Plus 15%	113,700	467.95
16	Pocatello,	Ida. Ogden,	Utah	134	2	40 Plus 15%	40,000	184.00
17	Idaho Falls,	Ida. Ogden,	Utah	185	9	46 Plus 15%	180,200	985.00
18	Oakley,	Ida. Salt Lake City,	Utah	272	1	52 Plus 15%	20,000	119.60
19	Oakley,	Ida. Huslers,	Utah	276	1	53 Plus 15%	20,000	121.90
20	Panaca,	Nev. Iron Springs,	Utah	107	9	4696 PC Plus 15%	180,000	486.00
21	Panaca,	Nev. Cedar City,	Utah	128	6	4696 PC Plus 15%	118,000	324.02
22	McCall,	Ida. Ogden,	Utah	505	1	76 Plus 15%	20,700	180.92
23	Los Angeles,	Calif. Roper,	Utah	791	1	92 Plus 15%	24,000	255.00

Tariff Authorities:
PSCFB 220-D, Agent J. P. Haynes: ICC 1514
D&RG 6776-F, ICC 951

PC - Per Car

Distances:
UPRR 4000-A, ICC 5325
D&RGW 5024-E, ICC 623
CamP 209-I, ICC F-232
SP 420-D, ICC 4687
WP 39-F, ICC 449

STATEMENT DEALING WITH INTRASTATE AND INTERSTATE RAIL MOVEMENT OF IRON ORE TO AND FROM POINTS IN UTAH DURING MAY, AUGUST, NOVEMBER 1953 AND FEBRUARY 1954

COLUMN:	1	2	3	4	5	6	7	8	9
LINE	From	To	Distance (Miles)	Number Cars	Rate (Per Ton) (Cents)	As Collected Weight (Pounds)	As Collected Charges (Dollars)	Basis for Revenue Sought X-168	Basis for Revenue Sought X-175-B	Total Revenue
	INTRASTATE									
1	Iron Springs, Utah	Geneva, Utah	237	229	207 GT	28,418,200	26,259.78	207 GT	Plus 12%	29,410.95
2	Desert Mound, Utah	"	241	2976	207 GT	396,444,900	366,334.12	207 GT	Plus 12%	410,294.21
3	Iron Mountain, Utah	"	252	3115	207 GT	363,200,400	335.614.60	207 GT	Plus 12%	375,888.35
4	Ironton, Utah	"	8	594	54 NT	82,082,500	32,162.28	54 NT	Plus 12%	36,021.75
5	Iron Springs, Utah	"	237	11	210 GT	1,277,100	1,197.20	210 GT	Plus 12%	1,340.86
6	Desert Mound, Utah	"	241	179	#194 GT	23,959,100	20,748.96	210 GT	Plus 12%	23,238.84
7	"	"	241	3001	210 GT	408,066,900	382,538.23	210 GT	Plus 12%	428,442.82
8	Iron Mountain, Utah	"	252	246	#194 GT	28,141,000	24,370.56	210 GT	Plus 12%	27,295.03
9	"	"	252	3767	210 GT	426,609,500	399,920.81	210 GT	Plus 12%	447,911.31
10	Geneva, Utah	Ironton, Utah	8	49	54 NT	6,989,100	1,887.06	54 NT	Plus 12%	2,113.51
11	Iron Mountain,	"	250	69	#194 GT	7,946,800	6,882.06	210 GT	Plus 12%	7,707.91
12	"	"	250	1591	210 GT	175,958,800	164,950.82	210 GT	Plus 12%	184,744.92
13	Iron Springs, Utah	International, Utah	235	1	266 GT (Plus 12%)	118,000	141.00	266 GT	Plus 12%	157.92
	INTERSTATE									
14	Belden, Colo.	Garfield, Utah	458	12	a380 NT	1,320,000	2,884.00			
15	Belden, Colo.	Garfield, Utah	458	3	b405 NT	.328,000	763.00			

Tariff Authorities:

LUFB 6-G, Agent J. A. Roubinek's ICC 5.
LUFB 6-F, Agent L. F. Mack's ICC 3.
DRGW 6000-F, ICC 641

Distances:

UPRR 4000-A, ICC 5325
PSFB 1-B, ICC 1539
DRGW 5024-E, ICC 623

Moved prior to May 1, 1953 and not subject to X-168 increase.
a Valuation not exceeding $17.50 per net ton.
b Valuation not exceeding $20.00 per net ton.

STATEMENT SHOWING INTRASTATE AND INTERSTATE MOVEMENT OF IRON ORE
FROM IRON SPRINGS, DESERT MOUND AND IRON MOUNTAIN, UTAH
TO

1953	Geneva & Ironton Utah	Minnequa, Colo.	Fontana, Calif.	Long Beach, Calif.	East of Chicago	Total
January	4994 Cars	1352 Cars	236 Cars	- Cars	281 Cars	6863
February	5552 "	1183 "	246 "	- "	237 "	7218
March	5263 "	1269 "	272 "	- "	253 "	7057
April	5381 "	1154 "	223 "	- "	192 "	6950
May	4305 "	1155 "	147 "	- "	168 "	5775
June	4211 "	1404 "	104 "	- "	210 "	5929
July	4006 "	1481 "	181 "	- "	144 "	5812
August	4356 "	1407 "	145 "	- "	152 "	6060
September	4560 "	1950 "	338 "	- "	140 "	6988
October	4885 "	2702 "	255 "	- "	107 "	7949
November	4997 "	1661 "	253 "	581 "	105 "	7597
December	4504 "	1126 "	231 "	490 "	214 "	6565
Total	57014 "	17844 "	2631 "	1071 "	2203 "	80763

STATEMENT DEALING WITH INTRASTATE AND INTERSTATE RAIL MOVEMENT OF CLAY AND BENTONITE TO AND FROM POINTS IN UTAH DURING MAY, AUGUST, NOVEMBER 1953 AND FEBRUARY 1954

COLUMN:	1	2	3	4	5	6	7	8	9
LINE	From	To	Distance (Miles)	Number Cars	Rate (Per Cwt) (Cents)	As Collected Weight (Pounds)	As Collected Charges (Dollars)	Basis for Revenue Sought X-168	X-175-B	Total Revenue
	INTRASTATE								
1	Henefer,	Utah Salt Lake City, Utah	72	50	156 NT	5,786,700	4,513.62	156 NT	Plus 15%	5,190.66
2	Silver City,	Utah "	87	374	08½	43,550,100	37,017.59	08½	Plus 15%	42,570.23
3	Pleasant Grove,	Utah Midvale, Utah	44	1	08½	125,200	106.42	08½	Plus 15%	122.38
4	Ivie,	Utah Geneva, Utah	6	2	318 NT	162,000	256.00	318 NT	Plus 15%	294.40
5	Milford,	Utah Magna, Utah	30	1	06	118,000	71.00	06	Plus 15%	81.65
6	Henefer,	Utah Sugar House, Utah	77	127	156 NT	14,612,000	11,398.00	156 NT	Plus 15%	13,107.70
7	Dolomite b/a								
8	Burmester,	Utah Salt Lake City, Utah	40	4	103 NT	369,300	199.42	108 NT	Plus 15%	229.33
9	Salt Lake City,	Utah Dolomite, Utah	40	1	38	99,840	379.39	38	Plus 15%	436.30
10	Ivie,	Utah Murray, Utah	36	1	22	60,000	132.00	22	Plus 15%	151.80
11	Kalumite,	Utah Salt Lake City, Utah	5	1	07½	88,000	66.00	07½	Plus 15%	75.90
	INTERSTATE								
12	Los Angeles,	Cal. Salt Lake City, Utah	782	98	45/15%	8,323,000	43,071.53			
13	Gooselake b/a								
14	Joliet,	Ill. Geneva, Utah	1831	6	70/15%	690,000	5,545.00			
15	Bentley b/a Upton,	Wyo. "	970	2	60/15%	200,000	1,380.00			
16	Moorcroft,	Wyo. Mt. Pleasant, Utah	985	3	63/15%	242,000	1,753.29			
17	Bentley b/a Upton,	Wyo. Scofield, Utah	908	4	60/15%	320,000	2,208.00			
18	Moorcroft,	Wyo. Price, Utah	885	5	55/15%	420,000	2.657.00			
19	Moorcroft,	Wyo. Brendel b/a								
20		Thompson, Utah	80	1	55/15%	80,000	506.00			
21	Pueblo,	Col. Ironton, Utah	579	3	32/15%	348,000	1 281.00			
22	Graniteville,	S.C. Nephi, Utah	2795	1	1500 NT/15%	103,100	889.24			
23	White Hills,	Cal. Garfield, Utah	1129	1	72/15%	61,200	506.74			
24	"	West Jordan, Utah	1127	1	72/15%	86,000	712.00			
25	Calphos,	Fla. Draper, Utah	2771	2	@1955 NT	161,600	1 579.64			

STATEMENT DEALING WITH INTRASTATE AND INTERSTATE RAIL MOVEMENT OF CLAY AND BENTONITE TO AND FROM POINTS IN UTAH DURING MAY, AUGUST, NOVEMBER 1953 AND FEBRUARY 1954

COLUMN:	1	2	3	4	5	6	7
LINE	From	To	Distance (Miles)	Number Cars	Rate (Per Cwt) (Cents)	As Collected Weight (Pounds)	As Collected Charges (Dollars)
	INTERSTATE						
1	Greybull,	Wyo. Wendover,	Utah 1235	2	71/15%	161,200	1,316.20
2	Robbins,	N.C. Ogden,	Utah 2677	15	150CNT/15%	1,512,680	13,048.80
3	White Hills,	Cal. Kalumite,	Utah 1119	1	72/15%	62,000	507.00
4	Canon City,	Col. Salt Lake City,	Utah 586	1	48/15%	75,200	415.10
5	Calphos,	Fla. Cutler,	Utah 2787	1	@195SNT	80,800	789.82
6	Marquis,	Ohio Geneva,	Utah 1990	7	81/15%	943,300	8,786.84
7	Stucco,	Wyo. "	1166	1	60/15%	80,600	556.14

Tariff Authorities:
PSFB 260-B, Agent J. P. Haynes' ICC 1522
UPRR 6051-J, ICC 5354
DRGW 6372-I, ICC 917
DRGW 6853-E, ICC 904
CUFS 4-G, Agent W. M. Carey's ICC 26
CTRTB 147-D, Agent H.R.Himsch's ICC 4238
TCFB 1-B, Agent W. J. Prueter's ICC 1551
SFTB 10-V, Agent C. A. Spaninger's ICC 1323
TCFB 1-C, Agent W. J. Prueter's ICC 1559
WTL 120-I, Agent W. J. Prueter's ICC A-3560
LUFB 1-Q, Agent J. A. Roubinek's ICC 4
UPRR 7038-B, ICC 5296
DRGW 4975-H, ICC 962
PSFB 12-J, Agent J. P. Haynes' ICC 1374.

Distances:
UPRR 4000-A, ICC 5325
CB&Q 9000-E, ICC 20386
WP 39-F, ICC 449
DRGW 5024-E, ICC 623
SP 420-D, ICC 4687
Erie 665, ICC A-5634
EJ&E 106-C, ICC 2199
G&O 250-E, ICC 89
SWL 4-E, Agent F.C. Kratzmeir's ICC 3926
SFTB 201-C, Agent C. A. Spaninger's ICC 1054
C&NW 14260-E, ICC 11093

@ Phosphatic Clay includes 60¢ Net Ton maximum under X-175-B

NT Net Ton

STATEMENT DEALING WITH INTRASTATE RAIL MOVEMENT OF GRAVEL AND SAND, NOS TO AND FROM POINTS IN UTAH DURING MAY, AUGUST, NOVEMBER 1953 AND FEBRUARY 1954

COLUMN:	1		2		3	4	5	6	7	8		9
LINE	From		To		Distance (Miles)	Number Cars	Rate (Per Net Ton) (Cents)	As Collected Weight (Pounds)	As Collected Charges (Dollars)	Basis for Revenue Sought X-168 Net Ton	Basis for Revenue Sought X-175-B	Total Revenue
	INTRASTATE											
1	Salt Lake City,	Utah	Wendover,	Utah	122	9	# 10½ Cwt.	1,001,700	1,050.00	11 Cwt.	Plus 12%	1,176.00
2	Nash,	Utah	Columbia,	Utah	133	15	157	2,198,000	1,725.00	157	Plus 12%	1,932.00
3	"		Dragerton,	Utah	134	27	124	3,224,000	1,999.00	124	Plus 12%	2,238.88
4	Salt Lake City,	Utah	"		156	16	135	1,780,000	1,202.00	135	Plus 12%	1,346.24
5	Nash,	Utah	Sunnyside,	Utah	137	2	#115	228,000	131.00	124	Plus 12%	146.72
6	"		"		137	27	124	3,216,000	1,993.00	124	Plus 12%	2,232.16
7	Salt Lake City,	Utah	"		160	4	135	462,000	312.00	135	Plus 12%	349.44
8	Nash,	Utah	Price,	Utah	104	72	124	10,818,000	6,709.00	124	Plus 12%	7,514.08
9	Riverton,	Utah	"		110	1	135	152,000	102.60	135	Plus 12%	114.91
10	Nash,	Utah	Latuda,	Utah	102	1	124	136,000	97.00	124	Plus 12%	108.64
11	"		Castle Gate,	Utah	93	5	124	530,000	328.00	124	Plus 12%	367.36
12	Cedar City,	Utah	Ogden,	Utah	311	1	343	111,400	191.05	343	Plus 12%	213.98
13	Salt Lake City,	Utah	Garfield,	Utah	16	38	89	4,274,100	1,901.97	89	Plus 12%	2,130.21
14	Saline,	Utah	Geneva,	Utah	106	108	324	12,811,400	20,754.47	324	Plus 12%	23,245.01
15	"		"		106	13	#300	1,627,100	2,440.65	324	Plus 12%	2,733.53
16	Brigham City,	Utah	Salt Lake City,	Utah	57	9	134	1,102,400	738.61	134	Plus 12%	827.24
17	Cedar City,	Utah	"		275	2	324	238,100	385.72	324	Plus 12%	432.00
18	"		Geneva,	Utah	249	13	275	1,918,300	2,637.67	275	Plus 12%	2,954.19
19	"		Garfield,	Utah	259	4	286	444,400	635.49	286	Plus 12%	711.75
20	"		Ironton,	Utah	247	3	275	350,600	482.08	297	Plus 12%	539.93
21	Salt Lake City,	Utah	Arsenal,	Utah	44	1	91	100,000	45.50	91	Plus 12%	50.96
22	"		Hill Field,	Utah	44	1	91	100,000	45.50	91	Plus 12%	50.96
23	Draper,	Utah	International,	Utah	59	1	*154	118,000	91.00	154	Plus 12%	101.92
24	Nash,	Utah	Utah Ry. Jct.,	Utah	94	36	124	5,489,200	3,403.33	124	Plus 12%	3,811.73
25	"		Martin,	Utah	95	3	124	347,560	215.49	124	Plus 12%	241.35
26	"		Wattis,	Utah	114	2	124	220,600	136.77	124	Plus 12%	153.18
27	Salt Lake City,	Utah	Wattis,	Utah	140	1	135	123,000	83.03	135	Plus 12%	92.99
28	Nash,	Utah	Geneva,	Utah	27	10	58	1,584,000	459.00	58	Plus 12%	514.08
29	"		Heber,	Utah	48	13	112	1,524,000	854.00	112	Plus 12%	956.48

STATEMENT DEALING WITH INTRASTATE RAIL MOVEMENT OF GRAVEL AND SAND, NOS
TO AND FROM POINTS IN UTAH DURING MAY, AUGUST, NOVEMBER 1953 AND FEBRUARY 1954

COLUMN:	1		2		3	4	5	6	7	8		9
LINE	From		To		Distance (Miles)	Number Cars	Rate (Per Net Ton) (Cents)	As Collected Weight (Pounds)	As Collected Charges (Dollars)	Basis for Revenue Sought X-168 Net Ton	X-175-B	Total Revenue
	INTRASTATE											
1	Salt Lake City,	Utah	Lead Mine,	Utah	22	3	91	376,000	172.00	91	Plus 12%	192.64
2	Nash,	Utah	Ironton,	Utah	25	22	64	2,576,000	824.00	64	Plus 12%	922.88
3	"		Lark,	Utah	24	1	105	112,000	59.00	105	Plus 12%	66.08
4	Salt Lake City,	Utah	Lead Mine,	Utah	22	16	91	1,804,000	821.00	91	Plus 12%	919.52
5	Nash,	Utah	Garfield,	Utah	85	1	# 85	116,000	49.00	92	Plus 12%	54.88
6	"		Sugar House,	Utah	66	1	63	110,000	34.60	63	Plus 12%	38.75
7	Salt Lake City,	Utah	"		5	1	91	110,000	50.05	91	Plus 12%	56.06
8	Nash,	Utah	Salt Lake City,	Utah	22	3	58	304,000	88.00	58	Plus 12%	98.56
9	Draper,	Utah	Lead Mine,	Utah	75	1	*154	118,000	90.86	154	Plus 12%	101.76
10	Nash,	Utah	Scofield,	Utah	93	4	115	448,000	258.00	124	Plus 12%	288.96
11	"		"		93	3	124	318,000	197.00	124	Plus 12%	220.64

Tariff Authorities:
UPRR 7038-B, ICC 5296
PSFB 12-J, Agent J. P. Haynes' ICC 1374
DRGW 4975-H, ICC 962
LUFB 1-Q, Agent J. A. Roubinek's ICC 4
GU 4-G, Agent W. H. Carey's ICC 26.

Mileages:
DRGW 5024-E, ICC 623
UPRR 4000-A, ICC 5325
WP 39-F, ICC 449
SP 420-D, ICC 4687
PSC 1-B, Agent J. P. Haynes' ICC 1539
Utah 131-A, ICC 74

\# Moved prior to May 1, 1953 and does not include X-168.
/ Applies on Silica Sand.
* Combination Rate.
Cwt. Per 100 pounds.

[fol. 631]

STATEMENT DEALING WITH INTERSTATE RAIL MOVEMENT OF GRAVEL AND SAND, NOS
TO AND FROM POINTS IN UTAH DURING MAY, AUGUST, NOVEMBER 1953 AND FEBRUARY 1954

COLUMN:	1	2	3	4	5	6	7
LINE	From	To	Distance (Miles)	Number Cars	Rate (Per Cwt) (Cents)	As Collected Weight (Pounds)	As Collected Charges (Dollars)
	INTERSTATE						
1	Pueblo, Colo.	Magna, Utah	633	2	27 Plus 12%	216,000	653.00
2	Emmett, Ida.	Salt Lake City, Utah	440	2	434 NT Plus 15%	201,000	501.60
3	Talica, Cal.	Garfield, Utah	859	16	41 Plus 15%	1,600,600	7,546.83
4	Emmett, Ida.	Arsenal, Utah	412	1	431 NT Plus 15%	100,440	248.92
5	Overton, Nev.	Sugar House, Utah	421	1	#470 NT Plus 15%	100,000	270.25
6	Marysville, Cal.	Ogden, Utah	707	14	38 Plus 12%	1,554,340	6,615.27

Tariff Authorities:

CU 4-G, W. M. Carey's ICC 26.
UPRR 7038-B, ICC 5296
PSFS 260-B, Agent J. P. Haynes' ICC 1522
DRGW 4975-H, ICC 962.

Distances:

DRGW 5024-E, ICC 623
SP 420-D, ICC 4687
UPRR 4000-A, ICC 5325

Combination Rate

Note: Movements to Magna and Ogden in open top cars and subject to 12% increase as shown.

STATEMENT DEALING WITH INTRASTATE AND INTERSTATE RAIL MOVEMENT OF LIMEROCK
TO AND FROM POINTS IN UTAH DURING MAY, AUGUST, NOVEMBER 1953 AND FEBRUARY 1954

COLUMN:	1	2	3	4	5	6	7	8		9
LINE	From	To	Distance (Miles)	Number Cars	Rate (Per Net Ton) (Cents)	As Collected Weight (Pounds)	As Collected Charges (Dollars)	Basis for Revenue Sought X-168 Net Ton	X-175-B	Total Revenue
	INTRASTATE									
1	Uisco, Utah	Garland, Utah	205	69	221	8,151,200	9,007.08	221	Plus 12%	10,087.93
2	"	" West Jordan, Utah	141	21	149	2,350,000	1,750.75	149	Plus 12%	1,960.84
3	Dolomite, Utah	Layton, Utah	62	13	140	1,518,000	1,062.60	140	Plus 12%	1,190.11
	INTERSTATE									
4	Lincoln, Ida.	Garland, Utah	188	6	262 Plus 12%		758,600	1,113.02		
5	Blackfoot, Ida.	Garland, Utah	157	7	238 Plus 12%		834,500	1,112.23		

Tariff Authorities:
UPRR 7038-B, ICC 5296
PSFB 12-J, Agent J. P. Haynes' ICC 1374

Distances:
UPRR 4000-A, ICC 5325
WP 39-F, ICC 449
DRGW 5024-E, ICC 623

STATEMENT DEALING WITH INTRASTATE AND INTERSTATE RAIL MOVEMENT OF GASOLINE
TO AND FROM POINTS IN UTAH DURING MAY, AUGUST, NOVEMBER 1953 AND FEBRUARY 1954

COLUMN:	1	2	3	4	5	6	7	8		9
LINE	From	To	Distance (Miles)	Number Cars	Rate (Per Cwt) (Cents)	As Collected Weight (Pounds)	As Collected Charges (Dollars)	Basis for Revenue Sought X-168	X-175-B	Total Revenue
	INTRASTATE									
1	Pioneer, Utah	Salt Lake City, Utah	6	71	04	4,749,500	1,899.80	04	Plus 15%	2,184.77
2	Salt Lake City, Utah	Bushnell, Utah	55	20	11	1,345,100	1,479.61	11	Plus 15%	1,701.55
3	"	Warner, Utah	36	7	07	439,800	307.86	07	Plus 15%	354.04
4	"	Nephi, Utah	90	18	17	1,224,900	2,082.33	17	Plus 15%	2,394.68
5	"	Provo, Utah	47	2	07	148,400	103.88	07	Plus 15%	119.46
6	"	Delta, Utah	135	8	25	524,700	1,311.75	25	Plus 15%	1,508.51
7	"	Milford, Utah	208	18	41	1,148,900	4,710.49	41	Plus 15%	5,417.06
8	"	Coalville, Utah	81	3	10	134,000	134.00	10	Plus 15%	154.10
9	"	Fillmore, Utah	167	17	26	968,600	2,518.36	26	Plus 15%	2,896.11
10	Woods Cross, Utah	Bushnell, Utah	47	4	11	213,800	235.18	11	Plus 15%	270.46
11	"	Nephi, Utah	98	1	17	40,600	69.02	17	Plus 15%	79.37
12	"	Coalville, Utah	72	3	10	216,500	216.50	10	Plus 15%	248.98
13	Pioneer, Utah	Nephi, Utah	96	2	17	93,900	159.63	17	Plus 15%	183.57
14	Salt Lake City, Utah	Desert Mound, Utah	268	3	49	128,700	630.63	49	Plus 15%	725.22
15	"	Iron Mountain, Utah	278	3	62	129,200	792.44	62	Plus 15%	911.31
16	"	Cedar City, Utah	275	47	49	2,862,300	14,025.27	49	Plus 15%	16,129.06
17	Pioneer, Utah	"	281	12	49	709,000	3,474.10	49	Plus 15%	3,995.22
18	Woods Cross, Utah	Wendover, Utah	130	1	26	53,361	138.74	26	Plus 15%	159.55
19	Salt Lake City, Utah	"	122	73	26	4,525,759	11,766.97	26	Plus 15%	11,943.47
20	"	Price, Utah	126	128	20	7,460,000	14,921.00	20	Plus 15%	17,159.15
21	"	Ephraim, Utah	117	10	16	638,000	1,022.00	16	Plus 15%	1,175.30
22	"	Manti, Utah	125	12	19	792,000	1,505.00	19	Plus 15%	1,730.75
23	"	Richfield, Utah	168	56	24	3,744,000	8,988.00	24	Plus 15%	10,336.20
24	"	Knightville, Utah	88	8	15	480,000	721.00	15	Plus 15%	829.15
25	"	Heber, Utah	70	39	09½	2,056,000	1,952.00	09½	Plus 15%	2,244.80
26	"	Bingham, Utah	25	29	05	1,872,000	941.00	05	Plus 15%	1,082.15
27	"	Ogden, Utah	36	40	06½	2,134,000	1,387.00	06½	Plus 15%	1,595.05
28	Pioneer, Utah	Price, Utah	132	14	20	844,000	1,687.00	20	Plus 15%	1,940.05
29	"	Thompson, Utah	223	2	35	134,000	466.00	35	Plus 15%	535.90

STATEMENT DEALING WITH INTRASTATE AND INTERSTATE RAIL MOVEMENT OF GASOLINE TO AND FROM POINTS IN UTAH DURING MAY, AUGUST, NOVEMBER 1953 AND FEBRUARY 1954

COLUMN: 1	2	3	4	5	6	7	8	9
LINE From	To	Distance (Miles)	Number Cars	Rate (Per Cwt.) (Cents)	As Collected Weight (Pounds)	As Collected Charges (Dollars)	Basis for Revenue Sought X-168	Basis for Revenue Sought X-175-B	Total Revenue
INTRASTATE									
1 Salt Lake City, Utah	Thompson, Utah	217	5	35	308,000	1,078.00	35	Plus 15%	1,239.70
2 "	Green River, Utah	190	13	31	600,000	1,860.00	31	Plus 15%	2,139.00
3 "	Nibley, Utah	174	2	28	110,000	308.00	28	Plus 15%	354.20
4 "	Evona, Utah	35	2	06½	108,000	70.00	06½	Plus 15%	80.50
5 Pioneer, Utah	Ephraim, Utah	123	11	16	548,000	877.00	16	Plus 15%	1,008.55
6 "	Marysville, Utah	202	1	28	52,000	145.60	28	Plus 15%	167.44
7 Woods Cross, Utah	Ephraim, Utah	125	3	16	160,000	256.00	16	Plus 15%	294.40
8 "	Richfield, Utah	176	8	24	426,000	1,022.00	24	Plus 15%	1,175.30
9 Salt Lake City, Utah	Hill Field, Utah	44	39	06½	2,634,124	2,650.57	06½	Plus 15%	3,048.16
INTERSTATE									
10 Boise, Ida.	Salt Lake City, Utah	405	22	53 Plus 15%	993,800	6,057.21			
11 Avon, Cal.	Heber, Utah	858	1	96 Plus 15%	30,000	331.00			

Tariff Authorities:
LUFT 1-Q, Agent J. A. Roubinek's ICC 4.
UTRR 6100-B, ICC 5374
PSFB 12-J, Agent J. P. Haynes' ICC 1374
PSFB 260-B, Agent J. P. Haynes' ICC 1522

Distances:
UPRR 4000-A, ICC 5325
DRGW 5024-E, ICC 623
WP 39-F, ICC 449
SP 420-D, ICC 4687

STATEMENT SHOWING INTERSTATE MOVEMENT
OF GASOLINE FROM SALT LAKE CITY, UTAH
TO THE FOLLOWING DESTINATIONS ON THE
UPRR IN IDAHO, NEVADA AND WYOMING
DURING THE YEAR 1953
ON WHICH THE
EX PARTE 175 INCREASE HAS BEEN APPLIED

IDAHO

Boise	53 cars
Burley	5 cars
Gooding	1 car
Idaho Falls	6 cars
Montpelier	161 cars
Mountain Home	192 cars
Nampa	1 car
Pocatello	1 car
Preston	102 cars
Soda Springs	33 cars
Twin Falls	4 cars

NEVADA

Caliente	47 cars
Las Vegas	161 cars
Boulder City	11 cars
Moapa	13 cars
Pioche	89 cars

WYOMING

Evanston	2 cars

Union Pacific RR. Accounting Department Form No. 861

STATEMENT DEALING WITH INTRASTATE AND INTERSTATE RAIL MOVEMENT OF FUEL AND ROAD OILS TO AND FROM POINTS IN UTAH DURING MAY, AUGUST, NOVEMBER 1953 AND FEBRUARY 1954

COLUMN:	1		2		3	4	5	6	7	8		9
LINE	From		To		Distance (Miles)	Number Cars	Rate (Per Cwt) (Cents)	As Collected Weight (Pounds)	As Collected Charges (Dollars)	Basis for Revenue X-168	Basis for Sought X-175-B	Total Revenue
	INTRASTATE											
1	Salt Lake City,	Utah	Wendover,	Utah	122	7	20½	533,742	1,094.17	20½	Plus 15%	1,258.30
2	"		Ogden,	Utah	36	599	06½	47,637,763	30,966.16	06½	Plus 15%	35,611.08
3	"		North Salt Lake,	Utah	5	1	05	53,902	26.95	05	Plus 15%	30.99
4	"		Orchard,	Utah	40	12	06½	866,885	563.48	06½	Plus 15%	648.00
5	Pioneer,	Utah	Salt Lake City,	Utah	6	3	04	201,000	80.40	04	Plus 15%	92.46
6	Salt Lake City,	Utah	Delta,	Utah	135	5	25	260,900	652.25	25	Plus 15%	750.09
7	Salt Lake City,	Utah	Milford,	Utah	208	8	31	424,100	1,314.71	31	Plus 15%	1,511.92
8	"		Coalville,	Utah	81	1	10	40,100	40.10	10	Plus 15%	46.12
9	"		Fillmore,	Utah	167	4	26	172,800	449.28	26	Plus 15%	516.67
10	"		Iron Springs,	Utah	264	8	35	344,200	1,204.70	35	Plus 15%	1,385.41
11	"		Desert Mound,	Utah	268	21	35	1,370,600	4,937.10	35	Plus 15%	5,677.67
12	"		Iron Mountain,	Utah	278	19	35	1,226,200	4,291.70	35	Plus 15%	4,935.46
13	"		Cedar City,	Utah	275	26	35	1,623,500	5,682.25	35	Plus 15%	6,534.59
14	Pioneer,	Utah	Cedar City,	Utah	281	9	35	524,600	1,836.10	35	Plus 15%	2,111.52
15	Woods Cross,	Utah	Garfield,	Utah	24	1	5¾	66,200	38.07	5¾	Plus 15%	43.78
16	Salt Lake City,	Utah	"		16	1	05	627,000	313.50	05	Plus 15%	360.53
17	Pioneer,	Utah	Nephi,	Utah	96	2	17	93,900	159.63	17	Plus 15%	183.57
18	Salt Lake City,	Utah	"		90	4	17	171,900	292.23	17	Plus 15%	336.06
19	"		Geneva,	Utah	43	300	07	16,700,200	11,690.14	07	Plus 15%	13,443.66
20	"		Bushnell,	Utah	55	6	13	388,100	467.25	13	Plus 15%	537.34
21	"		Brigham,	Utah	57	1	13	67,100	87.23	13	Plus 15%	100.31
22	"		Woods Cross,	Utah	8	2	05	120,100	60.05	05	Plus 15%	69.06
23	Woods Cross,	Utah	Ogden,	Utah	28	22	06½	1,176,300	764.60	06½	Plus 15%	879.29
24	"		Salt Lake City,	Utah	8	29	04	1,928,300	771.32	04	Plus 15%	887.02
25	Pioneer,	Utah	"		6	7	04	470,900	188.36	04	Plus 15%	216.61
26	Salt Lake City,	Utah	Clearfield,	Utah	27	5	06½	331,800	215.67	06½	Plus 15%	248.02
27	"		Ironton,	Utah	50	3	09	174,700	157.23	09	Plus 15%	180.81
28	"		Hiawatha,	Utah	142	31	20	1,324,479	2,648.95	20	Plus 15%	3,046.29
29	"		Martin,	Utah	120	23	20	1,227,924	2,455.88	20	Plus 15%	2,824.26
30	"		Columbia,	Utah	166	5	29	212,000	613.00	29	Plus 15%	704.95

+90 Fol. 68201 RESPONDENTS' EXHIBIT NO. 82

STATEMENT DEALING WITH INTRASTATE AND INTERSTATE RAIL MOVEMENT OF FUEL AND ROAD OILS
TO AND FROM POINTS IN UTAH DURING MAY, AUGUST, NOVEMBER 1953 AND FEBRUARY 1954

COLUMN:	1	2	3	4	5	6	7	8	9
LINE	From	To	Distance (Miles)	Number Cars	Rate (Per Cwt) (Cents)	As Collected Weight (Pounds)	As Collected Charges (Dollars)	Basis for Revenue Sought X-168 / X-175-B	Total Revenue
	INTRASTATE								
1	Salt Lake City, Utah	Price, Utah	126	5	20	224,000	449.00	20 Plus 15%	516.35
2	"	Ephraim, Utah	117	4	16	246,000	394.00	16 Plus 15%	453.10
3	"	Manti, Utah	125	1	19	68,000	129.00	19 Plus 15%	148.35
4	"	Richfield, Utah	168	14	24	616,000	1,477.00	24 Plus 15%	1,698.55
5	"	Knightville, Utah	88	5	15	336,000	505.00	15 Plus 15%	580.75
6	"	Heber, Utah	70	4	09½	168,000	160.00	09½ Plus 15%	184.00
7	"	Bingham, Utah	25	1	05	54,000	27.00	05 Plus 15%	31.05
8	"	Kalumite, Utah	5	12	05	78,000	390.00	05 Plus 15%	448.50
9	"	Geneva, Utah	43	552	09	31,954,000	28,760.00	09 Plus 15%	33,074.00
10	"	West Jordan, Utah	13	18	05	1,184,000	592.00	05 Plus 15%	680.80
11	"	Lead Mine, Utah	22	12	*2592 PC	510,000	311.04	2592 PC Plus 15%	357.70
12	"	Evona, Utah	35	1	06½	52,000	33.00	06½ Plus 15%	37.95
13	"	Sugar House, Utah	5	1	*2592 PC	44,000	25.92	2592 PC Plus 15%	29.81
	INTERSTATE								
14	Chester, Penn.	Geneva, Utah	2415	1	20½ Plus 15%)	60,200	1,412.29		

Tariff Authorities:
PSPB 12-J, Agent J. P. Haynes' ICC 1374
LUFT 1-Q, Agent J. A. Roubinek's ICC 4.
UPRR 6100-B, ICC 5374
DRGW 5909-J, ICC 841
TCFB 1-C, Agent W. J. Prueter's ICC 1559.

Distances:
UPRR 4000-A, ICC 5325
Utah 131-A, ICC 74
DRGW 5024-E, ICC 623
WP 39-F, ICC 449
B&O 3-A, ICC 23392
C&NW 14260-E, ICC 11093

* Minimum charge, C.F.C. No. 20, Rule 13, Sec. 2.
PC - Per Car

[fol. 632E]

+ 164

STATEMENT SHOWING INTERSTATE MOVEMENT
OF FUEL OIL FROM SALT LAKE CITY, UTAH
TO THE FOLLOWING DESTINATIONS ON THE
UPRR IN IDAHO AND NEVADA DURING THE YEAR 1953
ON WHICH THE EX PARTE 175 INCREASE HAS BEEN APPLIED

IDAHO

American Falls	2	cars
Blackfoot	9	"
Boise	25	"
Cascade	13	"
Conda/Soda Springs	14	"
Gooding	2	"
Idaho Falls	8	"
Twin Falls	10	"
Montpelier	22	"
Nampa	9	"
Pocatello	3	"
Preston	21	"
Soda Springs	2	"
Weiser	1	"
Bancroft	3	"
McMillan/Twin Falls	2	"
New Plymouth	1	"
Rexburg	2	"
Tetonia	2	"
Shoshone	1	"

NEVADA

Caliente	22	cars
Las Vegas	2	"
Pioche	57	"
Glendale/Moapa	1	"

Union Pacific RR. Accounting Form No. 861

STATEMENT DEALING WITH INTRASTATE AND INTERSTATE RAIL MOVEMENT OF MANUFACTURED IRON AND STEEL TO AND FROM POINTS IN UTAH DURING MAY, AUGUST, NOVEMBER 1953 AND FEBRUARY 1954

COLUMN:	1	2	3	4	5	6	7	8	9
LINE	From	To	Distance (Miles)	Number Cars	Rate (Per Cwt) (Cents)	As Collected Weight (Pounds)	As Collected Charges (Dollars)	Basis for Revenue Sought X-168 X-175-B	Total Revenue
	INTRASTATE								
1	Geneva, Utah	Salt Lake City, Utah	38	252	311 NT	28,578,000	44,443.00	311 NT Plus 15%	51,109.45
2	"	Provo, Utah	5	41	210 NT	4,620,000	4,851.00	210 NT Plus 15%	5,578.65
3	"	Gatex, Utah	2	30	156 NT	3,704,000	2,884.00	156 NT Plus 15%	3,316.60
4	"	Magna, Utah	45	6	389 NT	578,000	1,122.00	389 NT Plus 15%	1,290.30
5	"	Kalumite, Utah	44	3	311 NT	326,000	507.00	311 NT Plus 15%	583.05
6	"	Lead Mine, Utah	49	1	389 NT	94,000	182.00	389 NT Plus 15%	209.30
7	"	Ogden, Utah	86	7	389 NT	622,200	1,210.18	389 NT Plus 15%	1,391.71
	INTERSTATE								
8	Minnequa, Col.	Salt Lake City, Utah	628	25	78 Plus 15%	2,713,800	24,336.37		
9	"	Hiawatha, Utah	534	2	#102 Plus 15%	169,462	1,987.79		
10	"	Burmester, Utah	659	1	84 Plus 15%	40,000	386.40		
11	"	Garfield, Utah	637	2	78 Plus 15%	234,000	2,098.97		
12	Chicago, Ill	Salt Lake City, Utah	1514	27	132 Plus 15%	2,299,300	34,901.86		
13	Kaiser, Cal.	Salt Lake City, Utah	786	19	63 Plus 15%	2,017,600	14,617.51		
14	Pittsburg, Cal.	"	798	35	63 Plus 15%	3,320,314	25,164.48		
15	Pittsburgh, Pa.	Geneva, Utah	2025	1	164 Plus 15%	68,000	1,282.48		
16	Pittsburg, Cal.	Provo, Utah	846	5	63 Plus 15%	590,100	4,275.27		
17	Minnequa, Col.	Lead Mine, Utah	629	1	78 Plus 15%	90,000	807.00		
18	Cleveland, Ohio	Castle Gate, Utah	1903	2	147 Plus 15%	160,000	2,704.80		
19	Sharon, Pa.	Gatex, Utah	2025	1	160 Plus 15%	62,000	1,140.80		
20	Niles, Ohio	Richmond, Utah	1984	8	89 Plus 15%	748,000	7,659.87		
21	Torrance, Cal.	Desert Mound, Utah	600	1	91 Plus 15%	103,500	1,083.13		
22	West Elizabeth, Pa.	Warner, Utah	2040	2	164 Plus 15%	80,000	1,508.80		
23	Aliquippa, Pa.	Ogden, Utah	1939	14	89 Plus 15%	1,337,700	13,691.36		
24	Carnegie, Pa.	Clearfield, Utah	1959	3	164 Plus 15%	123,900	2,336.75		
25	So. Chicago, Ill.	Magna, Utah	1679	1	132 Plus 15%	92,000	1,404.00		

STATEMENT DEALING WITH INTRASTATE AND INTERSTATE RAIL MOVEMENT OF MANUFACTURED IRON AND STEEL TO AND FROM POINTS IN UTAH DURING MAY, AUGUST, NOVEMBER 1953 AND FEBRUARY 1954

COLUMN:	1	2	3	4	5	6	7
LINE	From	To	Distance (Miles)	Number Cars	Rate (Per Cwt) (Cents)	As Collected Weight (Pounds)	As Collected Charges (Dollars)
	INTERSTATE						
1	Kaiser, Cal.	Sunnyside, Utah	810	2	123 Plus 15%	184,000	2,602.00
2	Los Angeles, Cal.	Kearns, Utah	794	1	98 Plus 15%	40,000	451.00
3	Pittsburg, Cal.	Sugar House, Utah	2086	4	63 Plus 15%	296,000	2,145.00
4	E. Ferry, b/a						
5	Buffalo, N.Y.	Sigurd, Utah	2260	1	167 Plus 15%	40,000	768.00
6	Canton, Ohio	Ephraim, Utah	1975	1	167 Plus 15%	40,000	768.00
7	Torrance, Cal.	Hardy, Utah	795	1	63 Plus 15%	80,000	579.00
8	Calewood, Ill.	Sandy, Utah	1518	1	143 Plus 15%	54,700	899.54
9	Youngstown, Ohio	Layton, Utah	1915	2	160 Plus 15%	84,100	1,547.44
10	Alabama City, Ala.	Farmington, Utah	2137	1	148 Plus 15%	40,000	680.80
11	W. Elizabeth, Pa.	Murray, Utah	2011	1	164 Plus 15%	40,000	754.00

Tariff Authorities:

LUFB 1-Q, Agent J. A. Roubinek's ICC 4.
DRGW 4975-H, ICC 962
CUFB 4-G, Agent W. L. Carey's ICC 26
Utah 2-I, ICC 77
WTL 120-I, Agent W. J. Prueter's ICC A-3560
PSFB 260-B, Agent J. P. Haynes' ICC 1522
CTR 597-B, Agent W. J. Prueter's ICC A-3731
TCFB 1-C, Agent W. J. Prueter's ICC 1559.

NT - Net Ton
- Combination Rate.

Distances:

UPRR 4000-A, ICC 5325
DRGW 5024-E, ICC 623
Utah 131-A, ICC 74
WP 39-F, ICC 449
CNW 14260-E, ICC 11093
ATSF 9900-D, ICC 14399
SP 420-D, ICC 4687
Penn 500-B, ICC 2950
EJ&E 106-C, ICC 2199
C&StPP 4000-H, ICC B-7594
Erie 665, ICC A-5634
P&LE 3240, ICC 2942
NYC 2801, ICC 1536
NC&SL 20-B, ICC 3569-A
StLSF 1259-I, ICC 11408

STATEMENT DEALING WITH INTRASTATE RAIL MOVEMENT OF CRUDE
TO AND FROM POINTS IN UTAH DURING MAY, AUGUST, NOVEMBER 1953 AND FEBRUARY 1954

COLUMN:	1	2	3	4	5	6	7	8		9
LINE	From	To	Distance (Miles)	Number Cars	Rate (Per Cwt) (Cents)	As Collected Weight (Pounds)	As Collected Charges (Dollars)	Basis for Revenue Sought X-168	X-175-B	Total Revenue
	INTRASTATE									
1	Devils Slide, Utah	Wendover, Utah	190	1	30	95,000	285.00	30	Plus 15%	327.75
2	"	Green River, Utah	259	1	41	42,000	173.00	41	Plus 15%	198.95
3	"	Price, Utah	195	3	29	176,000	510.00	29	Plus 15%	586.50
4	"	Scofield, Utah	185	2	37	152,000	562.00	37	Plus 15%	646.30
5	"	Richfield, Utah	237	3	29	248,000	719.00	29	Plus 15%	826.85
6	"	Lead Mine, Utah	91	1	29	100,000	290.00	29	Plus 15%	333.50
7	"	Salt Lake City, Utah	68	73	06	7,641,180	4,701.07	06	Plus 15%	5,406.23
8	"	"	68	427	07	45,371,660	31,728.61	07	Plus 15%	36,487.90
9	"	Roy, Utah	38	2	12	92,010	110.41	12	Plus 15%	126.97
10	"	Bountiful, Utah	59	2	07	200,640	140.44	07	Plus 15%	161.51
11	"	Hill Field, Utah	40	1	12	40,280	48.34	12	Plus 15%	55.59
12	"	Cedar City, Utah	311	31	24	2,445,100	5,868.24	24	Plus 15%	6,748.76
13	"	Ogden Utah	32	11	08½	476,500	405.03	08½	Plus 15%	465.78
14	"	"	32	12	07	1,217,600	842.31	07	Plus 15%	968.66
15	"	"	32	1	05	100,300	50.15	05	Plus 15%	57.67
16	"	Provo, Utah	116	8	15	403,500	605.25	15	Plus 15%	696.04
17	"	Iron Mountain, Utah	347	5	24	458,200	1,099.68	24	Plus 15%	1,264.63
18	"	Clearfield, Utah	42	1	07	100,300	70.21	07	Plus 15%	80.74
19	"	Layton, Utah	47	1	07	100,200	70.14	07	Plus 15%	80.66
20	"	Geneva, Utah	111	1	14	95,000	133.00	14	Plus 15%	152.95
21	"	Nephi, Utah	158	3	22	220,300	484.66	22	Plus 15%	557.36
22	"	Garfield, Utah	84	4	18	401,200	722.16	18	Plus 15%	830.48
23	"	Delta, Utah	203	2	24	100,400	240.96	24	Plus 15%	277.10
24	"	Milford, Utah	276	5	24	311,700	748.08	24	Plus 15%	860.29
25	Salt Lake City, Utah	Cedar City, Utah	275	3	24	300,900	722.16	24	Plus 15%	830.48
26	"	Kenilworth, Utah	124	1	29½	100,000	295.00	29½	Plus 15%	339.25
27	"	Magna, Utah	28	2	14	200,000	280.00	14	Plus 15%	322.00

Tariff Authorities:
UPRR 6027-G, ICC 5154
D&RGW 4075-H, ICC 962
D&RGW 7000-A, ICC 699

Distances:
UPRR 4000-A, ICC 5325
D&RGW 5024-E, ICC 623
WPRR 39-E, ICC 449

/ Combination Rate.

STATEMENT DEALING WITH INTERSTATE RAIL MOVEMENT OF CEMENT
TO AND FROM POINTS IN UTAH DURING MAY, AUGUST, NOVEMBER 1953 AND FEBRUARY 1954

COLUMN:	1	2		3	4	5	6	7
LINE	From	To		Distance (Miles)	Number Cars	Rate (Per Cwt) (Cents)	As Collected Weight (Pounds)	As Collected Charges (Dollars)
	INTERSTATE							
1	Houston, Tex.	Salt Lake City,	Utah	1643	1	85 Plus 15%	52,000	508.00
2	Buffington, Ind.	Salt Lake City,	Utah	1534	1	80 Plus 15%	50,200	461.84
3	Navarro, Pa.	Sugar House,	Utah	*2407	4	100¾ Plus 15%	228,000	2,641.00

Tariff Authorities:
TCFB 1-C, Agent W. J. Prueter's ICC 1559
WTL 120-I, Agent W. J. Prueter's ICC A-3560
TL 37-H, Agent C. W. Boin's ICC A-970

Distances:
D&RGW 5024-E, ICC 623
AT&SF 9900-D, ICC 14399
UPRR 4000-A, ICC 5325
C&NW 11260-E, ICC 11093
EJ&E 106-C, ICC 2199

* Short Line Distance account route of movement unknown.

STATEMENT DEALING WITH INTERSTATE RAIL MOVEMENT OF CEMENT
TO AND FROM POINTS IN UTAH DURING MAY, AUGUST, NOVEMBER 1953 AND FEBRUARY 1954

COLUMN:	1	2		3	4	5	6	7
LINE	From	To		Distance (Miles)	Number Cars	Rate (Per Cwt) (Cents)	As Collected Weight (Pounds)	As Collected Charges (Dollars)
	INTERSTATE							
1	Devil's Slide, Utah	Pasadena,	Cal.	861	1	60 Plus 15%	100,320	692.21
2	"	Barber,	Ida.	411	2	48 Plus 15%	200,640	1,107.34
3	"	Idaho Falls,	Ida.	217	1	35 Plus 15%	76,000	305.90
4	"	Caliente,	Nev.	393	1	38 Plus 15%	60,040	262.37
5	"	Las Vegas,	Nev.	518	3	31½ Plus 15%	477,446	1,729.55
6	"	"		518	4	40 Plus 15%	301,340	1,386.17
7	"	"		518	8	31½ Plus 15%	1,265,260	4,583.43
8	"	"		518	13	31½ Plus 15%	1,980,160	7,173.15
9	"	"		518	2	40 Plus 15%	200,640	922.94
10	"	Wallowa, Ore.		650	1	58 Plus 15%	50,160	334.57
11	"	Green River,	Wyo.	144	1	32 Plus 15%	41,125	151.34
12	"	"		144	1	32 Plus 15%	40,230	148.05
13	"	"		144	1	32 Plus 15%	45,000	165.60
14	"	Reliance,	Wyo.	166	1	32 Plus 15%	59,280	218.16
15	"	Rock Springs,	Wyo.	159	7	32 Plus 15%	547,000	2,012.96
16	"	"		159	6	32 Plus 15%	467,755	1,721.33
17	"	"		159	6	32 Plus 15%	416,045	1,531.04
18	"	"		159	2	32 Plus 15%	129,140	475.24
19	"	Stansbury Mine,	Wyo.	169	1	32 Plus 15%	59,280	218.16
20	"	"		169	1	32 Plus 15%	83,125	305.90
21	"	Westvaco,	Wyo.	123	1	31 Plus 15%	40,280	143.60
22	"	"		123	1	31 Plus 15%	40,280	143.60
23	"	"		123	1	31 Plus 15%	40,280	143.60

Tariff Authorities:
PSPB 260-B, Agent J. P. Haynes' ICC 1522.
UPRR 6027-G, ICC 5154.

Distances:
UPRR 4000-A, ICC 5329

[fol. 632K]

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STATEMENT DEALING WITH INTRASTATE AND INTERSTATE RAIL MOVEMENT OF SUGAR
TO AND FROM POINTS IN UTAH DURING MAY, AUGUST, NOVEMBER 1953 AND FEBRUARY 1954

COLUMN:	1	2		3	4	5	6	7	8		9
LINE	From	To		Distance (Miles)	Number Cars	Rate (Per Cwt) (Cents)	As Collected Weight (Pounds)	As Collected Charges (Dollars)	Basis for Revenue Sought X-168	Basis for Revenue Sought X-175-B	Total Revenue
	INTRASTATE										
1	Ogden Sugar Works,	Utah Ogden,	Utah	3	5	04½	506,400	215.22	04½	Plus 15%	247.50
2	Lewiston,	Utah Salt Lake City,	Utah	126	2	17	202,000	343.40	17	Plus 15%	394.91
3	Garland,	Utah Lehi,	Utah	108	49	22	4,995,900	10,990.98	22	Plus 15%	12,639.63
4	Lewiston,	Utah Ogden Sugar Works,	Utah	91	47	17	4,747,000	8,069.90	17	Plus 15%	9,280.39
5	Spearmint,	Utah Lehi,	Utah	113	1	25	100,000	250.00	25	Plus 15%	287.50
6	"	West Jordan,	Utah	132	55	≠34	6,068,000	20,631.20	34	Plus 15%	23,725.88
7	West Jordan,	Utah Lehi,	Utah	22	19	09	2,306,000	2,075.00	09	Plus 15%	2,386.25
8	Garland,	Utah West Jordan,	Utah	92	8	22	808,000	1,777.00	22	Plus 15%	2,043.55
	INTERSTATE										
9	Oakland,	Cal. Salt Lake City,	Utah	921	2	@108	166,381	1,797.04			
10	Myers,	Ida. Ogden,	Utah	211	26	39 Plus 15%	2,626,000	11,777.61			
11	Whitney,	Ida. Salt Lake City,	Utah	133	1	17 Plus 15%	101,000	197.46			
12	McMillan,	Ida. Sugar Works,	Utah	246	46	39 Plus 15%	4,541,600	20,369.08			
13	Nyssa,	Ore. Relico,	Utah	409	1	54 Plus 15%	80,800	501.77			
14	McMillan,	Ida. Lewiston,	Utah	183	2	39 Plus 15%	203,400	912.25			
15	Crockett,	Cal. West Jordan,	Utah	767	2	@108	120,000	1,296.00			

Tariff Authorities:
UPRR 4100, ICC 5194
LUFT 1-Q, Agent J. A. Roubinek's ICC 4.
D&RGW 4975-H, ICC 962
PSFB 260-B, Agent J. P. Haynes' ICC 1522

Distances:
WP 39-F, ICC 449
SP 420-D, ICC 4687
D&RGW 5024-E, ICC 623
UP 4000-A, ICC 5325

≠ Combination rate.
@ Includes 10¢ maximum under X-175-B.

Page 1

STATEMENT DEALING WITH INTRASTATE RAIL MOVEMENT OF BEET PULP
TO AND FROM POINTS IN UTAH DURING MAY, AUGUST, NOVEMBER 1953 AND FEBRUARY 1954

LINE	1 From	2 To	3 Distance (Miles)	4 Number Cars	5 Rate (Per Cwt) (Cents)	6 As Collected Weight (Pounds)	7 As Collected Charges (Dollars)	8 Basis for Revenue Sought X-168	8 Basis for Revenue Sought X-175-B	9 Total Revenue
	INTRASTATE									
1	West Jordan, Utah	Cedar City, Utah	280	3	27	142,800	385.56	27	Plus 15%	443.39
2	"	Ogden, Utah	50	1	13	51,000	66.30	13	Plus 15%	76.25
3	"	Morgan, Utah	75	2	15	102,000	153.00	15	Plus 15%	175.95
4	"	Kaysville, Utah	33	2	13	85,700	111.41	13	Plus 15%	128.12
5	"	Payson, Utah	52	1	13	60,000	78.00	13	Plus 15%	89.70
6	"	Nephi, Utah	79	1	15	51,000	76.50	15	Plus 15%	87.98
7	"	Delta, Utah	140	1	19	51,000	96.90	19	Plus 15%	111.44
8	"	Wanship, Utah	63	2	18	81,600	146.88	18	Plus 15%	168.91
9	"	Tremonton, Utah	89	1	15	40,800	61.20	15	Plus 15%	70.38
10	"	Ephraim, Utah	109	2	15	108,000	162.00	15	Plus 15%	186.30
11	"	Moroni, Utah	121	2	15	102,000	153.00	15	Plus 15%	175.95
12	"	Manti, Utah	117	1	18	60,000	108.00	18	Plus 15%	124.20
13	"	Gunnison, Utah	129	1	19	60,000	90.00	19	Plus 15%	103.50
14	"	Aurora, Utah	148	4	21	236,000	495.60	21	Plus 15%	569.94
15	"	Kema, Utah	156	1	21	60,000	126.00	21	Plus 15%	144.90
16	"	Richfield, Utah	160	1	21	60,000	126.00	21	Plus 15%	144.90
17	"	Central, Utah	165	1	22	62,000	136.40	22	Plus 15%	156.86
18	"	Nibley, Utah	166	3	22	184,000	404.80	22	Plus 15%	465.52
19	"	Spanish Fork, Utah	45	15	09	998,000	898.00	09	Plus 15%	1032.70
20	"	"	45	21	09½	1,000,000	950.00	09½	Plus 15%	1092.50
21	"	Lehi, Utah	53	1	08½	116,000	98.60	08½	Plus 15%	113.39
22	"	"	53	7	08½	370,000	315.00	08½	Plus 15%	362.25
23	"	Salt Lake City, Utah	13	7	08½	356,000	303.00	08½	Plus 15%	348.45
24	Lewiston, Utah	Ogden, Utah	89	2	164 NT	227,400	186.46	164 NT	Plus 15%	214.43
25	"	Wellsville, Utah	27	2	73 NT	215,400	78.62	73 NT	Plus 15%	90.41
26	"	Hyrum, Utah	23	4	65 NT	462,400	150.28	65 NT	Plus 15%	172.82
27	Spearmint, Utah	Moroni, Utah	34	3	85 NT	298,000	127.00	85 NT	Plus 15%	146.05
28	"	Kema, Utah	24	1	70 NT	104,000	36.40	70 NT	Plus 15%	41.86
29	"	Gramse, Utah	26	2	78 NT	208,000	81.00	78 NT	Plus 15%	93.15
30	"	Richfield, Utah	28	1	3120 PC	104,000	31.20	3120 PC	Plus 15%	35.88
31	"	Central, Utah	33	2	3510 PC	200,000	70.20	3510 PC	Plus 15%	80.73

Tariff Authorities:
DRGW 7217-B, ICC 958
DRGW 4975-H, ICC 962
UPRR 2038-K, ICC 5347

Distances:
UPRR 4000-A, ICC 5325
DRGW 5024-E, ICC 623

NT - Net Ton. PC - Per Car.

STATEMENT DEALING WITH INTERSTATE RAIL MOVEMENT OF BEET PULP
TO AND FROM POINTS IN UTAH DURING MAY, AUGUST, NOVEMBER 1953 AND FEBRUARY 1954

COLUMN:	1	2		3	4	5	6	7
LINE	From	To		Distance (Miles)	Number Cars	Rate (Per Cwt) (Cents)	As Collected Weight (Pounds)	As Collected Charges (Dollars)
	INTERSTATE							
1	Hyssa, Ore.	Ogden,	Utah	408	16	32 Plus 15%	804,800	2,361.66
2	"	Layton,	Utah	423	3	33 Plus 15%	153,000	580.64
3	"	Logan,	Utah	343	7	30 Plus 15%	366,100	1,263.05
4	"	Sugar Works Spur,	Utah	408	7	32 Plus 15%	355,400	1,307.87
5	Lincoln, Ida.	Honeyville,	Utah	160	2	19 Plus 15%	101,000	220.69
6	"	Garland,	Utah	188	1	24 Plus 15%	60,600	167.26
7	"	Cedar City,	Utah	501	1	37 Plus 15%	50,500	214.88
8	Hyssa, Ore.	Smithfield,	Utah	343	1	30 Plus 15%	51,000	175.95

Tariff Authority:
UPRR 7270-B, ICC 5297

Distances:
UPRR 4000-A, ICC 5325

SECRETARY'S CERTIFICATE TO FOLLOWING EXHIBITS
(omitted in printing)

[fol. 634] RESPONDENTS' EXHIBIT NO. 37

STATEMENT SHOWING COMPARISON OF INTRASTATE AND INTERSTATE CLASS RATES
RATES IN CENTS PER 100 POUNDS

1	2	3	4	5	6	7	8	9	10	11	12	13	14
Between	And	Miles	Basis For Proposed Rate	CLASSES 1	2	3	4	5	A	B	C	D	E
			6-30-46	52	43	39	31	30	28	24	19	18	13
			X-162	62	52	47	37	36	34	29	23	22	16
			X-166	74	62	56	44	43	41	35	28	26	19
Salt Lake City, Utah	Cache Jct., Utah	85	X-168	80	67	60	48	46	44	38	30	28	21
			Present	80	67	60	48	46	44	38	30	28	21
			Proposed	92	77	69	55	53	51	44	35	32	24
			Arizona	131	110	91	79	64	64	52	38	35	25
			6-30-46	52	43	39	31	30	28	24	19	18	13
			X-162	62	52	47	37	36	34	29	23	22	16
			X-166	74	62	56	44	43	41	35	28	26	19
Pocatello,	Ida. Cache Jct., Utah	85	X-168	80	67	60	48	46	44	38	30	28	21
			Present	92	77	69	55	53	51	44	35	32	24
			Arizona	131	110	91	79	64	64	52	38	35	25
			6-30-46	70	62	54	47	42	42	34	27	20	18
			X-162	84	74	65	56	50	50	41	32	24	22
			X-166	101	89	78	67	60	60	49	38	29	26
Salt Lake City, Utah	Wahsatch, Utah	101	X-168	109	96	84	72	65	65	53	41	31	28
			Present	109	96	84	72	65	65	53	41	31	28
			Proposed	125	110	97	83	75	75	61	47	36	32
			Arizona	155	133	109	92	79	79	62	46	39	32
			6-30-46	70	62	54	47	42	42	34	27	20	18
			X-162	84	74	65	56	50	50	41	32	24	22
Salt Lake City, Utah	Wyuta, Wyo.	107	X-166	101	89	78	67	60	60	49	38	29	26
			X-168	109	96	84	72	65	65	53	41	31	28
			Present	125	110	97	83	75	75	61	47	36	32
			Arizona	155	133	109	92	79	79	62	46	38	32
			6-30-46	65	56	50	40	37	36	31	26	20	18
			X-162	78	67	60	48	44	43	37	31	24	22
			X-166	94	80	72	58	53	52	44	37	29	25
Salt Lake City, Utah	Portage, Utah	94	X-168	102	86	78	63	57	56	48	40	31	28
			Present	102	86	78	63	57	56	48	40	31	28

				Arizona	155	133	109	92	79	79	62	46	32
				6-30-46	65	56	50	40	37	36	31	26	20	18
				X-162	78	67	60	48	44	43	37	31	24	22
				X-166	94	80	72	58	53	52	44	37	29	26
Salt Lake City, Utah	Portage,	Utah	94	X-168	102	86	78	63	57	56	48	40	31	28
				Present	102	86	78	63	57	56	48	40	31	28
				Proposed	117	99	90	72	66	64	55	46	36	32
				Arizona	137	118	97	82	69	69	55	43	36	28
				6-30-46	70	59	52	40	37	36	35	26	22	16
				X-162	84	71	62	48	44	43	42	31	26	22
Salt Lake City, Utah	Cocruff,	Ida.	98	X-166	101	85	74	58	53	52	50	37	31	25
				X-168	109	92	80	63	57	56	54	40	33	28
				Present	125	106	92	72	66	64	62	46	38	32
				Arizona	137	118	97	82	69	69	55	43	36	28
				6-30-46	71	60	50	40	34	32	28	23	19	14
				X-162	85	72	60	48	41	38	34	28	23	17
				X-166	102	86	72	58	49	46	41	34	28	20
Salt Lake City, Utah	Utida,	Utah	99	X-168	110	93	78	63	53	50	44	37	30	22
				Present	110	93	78	63	53	50	44	37	30	22
				Proposed	127	107	90	72	61	58	51	43	35	25
				Arizona	137	118	97	82	69	69	55	43	36	28
				6-30-46	77	66	54	46	39	39	31	25	20	15
				X-162	92	79	65	55	47	47	37	28	24	18
Salt Lake City, Utah	Anderson,	Ida.	100	X-166	110	95	78	66	56	56	44	34	29	22
				X-168	119	103	84	71	60	60	48	37	31	24
				Present	137	118	97	82	69	69	55	43	36	28
				Arizona	137	118	97	82	69	69	55	43	36	28
				6-30-46	84	70	56	43	37	37	34	27	23	18
				X-162	101	84	67	52	44	44	41	32	26	22
				X-166	121	101	80	62	53	53	49	38	31	26
Salt Lake City, Utah	Lewiston,	Utah	126	X-168	131	109	86	67	57	57	53	41	33	28
				Present	131	109	86	67	57	57	53	41	33	28
				Proposed	151	125	99	77	66	66	61	47	38	32
				Arizona	169	141	118	99	83	83	66	52	43	35
				6-30-46	84	70	56	43	41	41	37	29	23	18
				X-162	101	84	67	52	49	49	44	35	28	23
Salt Lake City, Utah	Franklin,	Ida.	128	X-166	121	101	80	62	59	59	53	42	34	28
				X-168	131	109	86	67	64	64	57	45	37	30
				Present	151	125	99	77	74	74	66	52	43	35
				Arizona	169	141	118	99	83	83	66	52	43	35

Authorities:

U.S.B.R. 6046-B, I.C.C. 4986
W.T.C.R. 7002-A, I.C.C. 4718
U.P.C.R. 4000-A, I.C.C. 5329

STATEMENT SHOWING COMPARISON OF INTRASTATE AND INTERSTATE RATES ON MERCHANDISE AS DESCRIBED ON PAGES 194 TO 205 INCL., U.F. TARIFF 4100, I.C.C. 5194 AS TO RATE CLASSES A-B-C-D

COLUMN:	1	2	3	4	5	6	7	8
LINE	From	To	Miles	Basis for Proposed Rate	Rates in Cents per 100 Pounds A	B	C	D
1				6-30-46	63	53	42	34
2				X-162	76	64	50	41
3		Portage, Utah	94	X-166	91	77	60	49
4				X-168	98	83	65	53
5				Present	101	85	65	61
6				6-30-46	63	53	42	34
7				X-162	76	64	50	41
8		Woodruff, Ida.	98	X-166	91	77	60	49
9				X-168	98	83	65	53
10				Present	101	85	65	61
11				6-30-46	67	56	45	36
12				X-162	80	67	54	43
13		Utida, Utah	99	X-166	96	80	65	52
14				X-168	104	86	70	56
15				Present	106	88	72	63
16				6-30-46	67	56	45	36
17				X-162	80	67	54	43
18		Anderson, Ida.	100	X-166	96	80	65	52
19				X-168	104	86	70	56
20				Present	106	88	72	63
21				6-30-46	67	56	45	36
22	Salt Lake City, Utah			X-162	80	67	54	43
23		Lewiston, Utah	126	X-166	96	80	65	52
24				X-168	104	86	70	56
25				Present	106	88	72	63
26				6-30-46	67	56	45	36
27				X-162	80	67	54	43
28		Franklin, Ida.	128	X-166	96	80	65	52
29				X-168	104	86	70	56

			Present	106	88	72	63
			6-30-46	67	56	45	36
			X-162	80	67	54	43
Franklin,	Ida.	128	X-166	96	80	65	52
			X-168	104	86	70	56
			Present	106	88	72	63
			6-30-46	(1)53	(2)44	(3)40	(4)35
			X-162	(1)64	(2)53	(3)48	(4)42
Wahsatch,	Utah	101	X-166	(1)77	(2)64	(3)58	(4)50
			X-168	(1)83	(2)69	(3)63	(4)54
			Present	(1)83	(2)69	(3)63	(4)54
			6-30-46	(1)53	(2)44	(3)40	(4)35
			X-162	(1)64	(2)53	(3)48	(4)42
Wyuta,	Wyo.	107	X-166	(1)77	(2)64	(3)58	(4)50
			X-168	(1)83	(2)69	(3)63	(4)54
			Present	(1)95	(2)79	(3)72	(4)62
			6-30-46	69	58	46	40
Portage,	Utah	170	Present	124	105	82	72
			6-30-46	59	58	46	43
Woodruff,	Ida.	154	Present	124	105	82	77
			6-30-46	42	34	31	25
Pocatello, Ida. Utida,	Utah	69	Present	75	61	55	45
			6-30-46	42	34	31	25
Anderson,	Ida.	69	Present	75	61	55	45
			6-30-46	59	51	42	36
Lewiston,	Utah	69	Present	85	78	62	54
			6-30-46	59	51	42	36
Franklin,	Ida.	69	Present	85	78	62	54

(1) Applies on articles rated Column J on Pages 194 to 205, incl., U.P. 4100, I.C.C. 5134.
(2) " " X " " " "
(3) " " Y " " " "
(4) " " Z " " " "

Tariff Authorities:
U.P.R.R. 4100, I.C.C. 5134
U.P.R.R. 4000-A, I.C.C. 5325

[fol. 636] RESPONDENTS' EXHIBIT No. 39

STATEMENT AND EXHIBITS

OF

WALDO A. GILLETTE

MONOLITH PORTLAND MIDWEST COMPANY

My name is Waldo A. Gillette. I am Director of Public Relations and Traffic Manager for the Monolith Portland Midwest Company with a cement plant at Laramie, Wyoming; also, the Monolith Portland Cement Company with a cement plant at Monolith, California. I am also a member of the Board of Directors of the Monolith Portland Cement Company.

I am a graduate of Harvard, where I majored in Economics. I am admitted to practice before the Interstate Commerce Commission and am a member of the Society of Automotive Engineers. We have appeared before the Interstate Commerce Commission in each of the Ex Parte Hearings, 162 to date.

In each of the Ex Parte revenue case increases during the past decade, this commission has requested the carriers to reestablish disturbed relationships. This Commission specifically stated at Page 437 of 270 I.C.C. in its findings concerning intrastate rates that the authorized increase presupposes "...that generally similar increases will be permitted by State authority on intrastate traffic, or may become effective otherwise."

One of the greatest economic advantages in the United States is the fact that there are no economic barriers between the various States. If we will contrast this situation with the situation in Europe, for example, where there are tariff or economic barriers between each of the different countries, it can be seen what a great advantage is present in the United States where these economic or tariff barriers between States do not exist. When a State fails to keep its intrastate rates in line with the interstate rates to the same destinations, a situation then arises where that particular State has raised an economic or a tariff barrier against the interstate shipper in favor of the intrastate shipper.

Located in the sparcely settled State of Wyoming, as we are, our markets are not within the State of Wyoming but within many of the surrounding States. It is therefore imperative that we maintain our relationship in competing with cement plants in all of the different States in our marketing area. For that reason, it is important to us that when an ex parte increase such as was granted by the I.C.C. on cement under Ex Parte 175, that a similar ex parte increase be granted the carriers within the State of Utah.

The Monolitn Portland Midwest Company cement plant is located at Laramie, Wyoming. I have checked back through our records as far as 1937 and find that from 1937 through 1945 we shipped an average of 1,640 tons, or 8,610 barrels, per year into the State of Utah. Our records show that no shipments have been made into Utah since 1948. The shipments which were made in 1947 and 1948 were made because of the shortage of cement. Shortage in the area has disappeared. We are now completely shut out of the market in Utah because of the several percentage increases.

It is our position that we, as a shipper, have the right to choose our market, and that unnatural and unwarranted barriers are prejudicial. (Increases in Tennessee, 272 I.C.C. 625 (643).)

These interstate increases have so distorted our relationship with the mills at Devils Slide and Salt Lake City, Utah, that Mcnolith has lost its entire Utah market. Our sales during the period 1937 to 1945 exceeded 1,640 tons a year. This tonnage far exceeded the tonnage involved in an Arizona discrimination case arising out of the loss of market and damage to a Colorado shipper in the case reported 255 - I.C.C. - 461.

The Interstate Commerce Commission has always recognized the necessity of maintaining relationships upon cement. The most concise statement, I believe, is found in Ex Parte 148, proceeding, 248, I.C.C. at 602:

"The highly competitive conditions in the cement industry are well known. The freight rate is from 25 to 33.33 per cent of the delivered cost. A slight difference per barrel may control a sale, and a 1¢ increase per 100 pounds in the freight rate is equivalent to 3.8¢ per barrel. Cement is essentially a short-haul commodity. The greatest density of movement in the East is for distances of 135 to 150 miles, and in the West up to 200 miles. The cement tonnage is important to the railroads, the revenues received therefrom in 1940 approximating $55,000,000. Maintenance of the present relations is desired because any widening of the differences would divert tonnage from higher-rates to lower-rates producing points. The 1-cent maximum would preserve existing relations on the short-haul traffic, and, in the main, relations for the long hauls."

The Interstate Commerce Commission, in granting Ex Parte 166 to 175 increases, admonished the carriers to reconsider rate relationships when authorizing the carriers to make effective percentage increases.

Fol. 639

The long-haul shipper is an important factor in the welfare of the rail carriers. The fact that Laramie no longer ships into Utah has had not only an adverse effect on the cement shipper at Laramie, but on the carrier itself, as those shipments from Laramie are now displaced by short-haul lower rates which, in fact, decrease the carriers' net revenue when compared with long hauls from Laramie.

Our Page No. 6 is a Map showing the location of the Monolith mill at Laramie, Wyoming. Since I became Traffic Manager of this Company in 1929, I have annually, or more often, made trips via railroad or automobile to the areas serviced by the cement produced at our mill and these competing mills. The rail transportation conditions have not substantially changed in any respect during that time except to the extent that greater efficiency has been attained by the railroads in motive power, for example, dieselization, automatic central traffic control and length and speed of trains.

The Laramie plant investment was made in reliance upon the establishment of the relationship existing before the ex parte increases. My more than twenty years study of transportation conditions in this and many proceedings before this Commission causes me to state that there is no justification for a change in relationship on the basis of changed transportation conditions.

Our Map on Page No. 6, I believe, is adequate to graphically demonstrate this to you. Transportation conditions were found to be similar in Montana, North and South Dakota areas in Docket 16,586 in the Decision of June 28, 1927, reported 129 - I.C.C. - 107. No decision except Decision 30961 has come to my attention involving transportation conditions in the territory of Laramie, and West, including Eastern Utah. Based upon my observations of the mountainous Montana and Black Hills, Dakota areas, I state that the transcontinental main line rail movement from Laramie West to Provo, Salt Lake City and Ogden over the flat plateau Laramie, Wyoming to Ogden is more favorable, transportation conditions considered.

Our Page No. 7 is a statement showing the rate to Ogden, Salt Lake City and Provo, Utah from the origin point Laramie, Devils Slide and Salt Lake City. This is self-explanatory and shows the base rates compared to the present rates.

My Page No. 8 is a statement showing relationships between Laramie and Devils Slide to these points under the base rates and under the rates as they are at the present time.

It would serve no useful purpose and only burden this record, in my opinion, to prepare and submit detailed rates to every flag station or town, and mileages, populations, et cetera. These are the principal destinations. The distortions of our rate relationships are demonstrated at these points and the same situation exists at all points.

AGAIN I state this distortion has damaged the Laramie plant by the loss in excess of 1,600 tons of business per year.

A similar situation to this arose in 1952. I appeared before this Honorable Commission at Salt Lake City on February 25, 1952 and submitted a statement similar to this one. Later, a 13th Section Hearing was held in Denver on March 3, 1952, against the Colorado Public Utilities Commission, and on March 7, 1952, in Lincoln, Nebraska against the Nebraska State Railway Commission.

As a result, decisions were rendered in Docket No. 30961 and No. 30959.

I quote from the Utah Intrastate Freight Rates and Charges Decision No. 30961, decided December 1, 1952, on Sheet 32 and a part of Sheet 33 as follows:

"The Monolith Portland Midwest Company operates a cement plant at Laramie, Wyo. This investment was made in reliance upon a continuance of the cement rate relations existing in that general territory prior to the general rate increases authorized in Ex Parte Nos. 162, 166 and 168. From 1937 to 1945 this company shipped annually an average of 1,640 tons (8,610 bbls.) of cement from Laramie to points in Utah. The refusal of the Utah Commission to permit the full increases authorized for application on interstate traffic disrupted the rate relations with the result that this company made no shipments to points in Utah since 1948 and no longer solicits business in that territory. The cement industry is highly competitive, the freight rate being from 25 to 33.33 percent of the delivered cost. An increase of 1-cent per 100 pounds is equivalent to 3.8 cents a barrel. Cement is essentially short-haul traffic.

The Monolith Company contends that it has the right to choose its markets; and that the refusal of the Utah Commission to permit increases in the intrastate rates on cement to the basis authorized for interstate application unduly prejudices the cement shipper at Laramie and unduly prefers shippers of that commodity intrastate in Utah. On June 30, 1946, the Utah intrastate shipper at Devils Slide had a rate advantage of 28.5 cents under Laramie on traffic to Ogden,

but at the present time the rate advantage, including the Ex Parte 175 increase (not involved in this proceeding), is 42.88 cents. By reason of the refusal of the Utah Commission to permit increases in the intrastate rates on cement to the extent authorized for interstate application, the rate disadvantage of the Laramie producer has been increased 14.38 cents. In 1950, the Denver & Rio Grande Western, Union Pacific, Southern Pacific, and Western Pacific terminated 2,142 carloads of cement intrastate in Utah, as compared with 47 carloads in interstate traffic. This indicates the almost complete exclusion from the Utah market of cement produced in other States."

I further quote from the same Decision on Sheet 49 - Findings and Conclusions No. 5:

"The Utah intrastate rates on sugar beets, beet pulp, molasses, lime rock, cement, coal, coke, ores and concentrates, and sand and gravel cause undue and unreasonable advantage and preference of intrastate shippers and undue and unreasonable prejudice and disadvantage to interstate shippers."

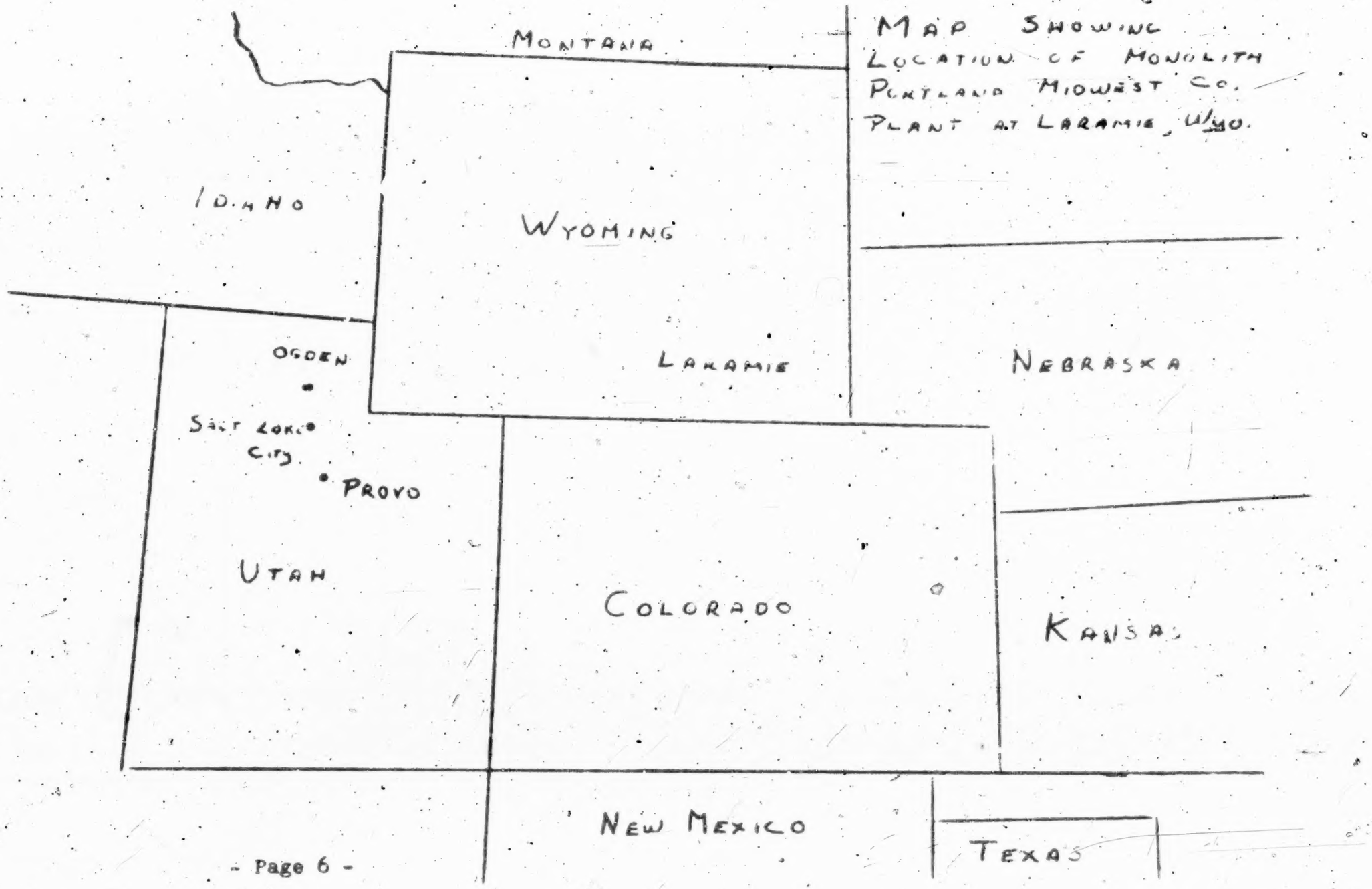
Both of these decisions covered the same subject of discrimination, or the raising of economic barriers in favor of intrastate shipments as against interstate shipments. It is my contention that this is the same subject today covering Ex Parte 175 as these cases decided above covering Ex Parte 168.

During the years 1953 and 1954 we have shipped cement into the States of Colorado, Nebraska, New Mexico, South Dakota and Idaho. This, I believe, is sufficient to indicate to this Commission that we are in a position to ship into these various territories and, therefore, no economic barriers should be permitted to be set up in Utah to prevent us from shipping into that State.

We suggest that this Honorable Commission direct the carriers to restore the relationships which existed prior to the ex parte increases. In the instant case, that this Honorable Commission order the Public Service Commission of Utah to make effective all of the Interstate Commerce Commission Ex Parte orders within the State of Utah on Cement.

[Col. 642]

MAP SHOWING
LOCATION OF MONOLITH
PORTLAND MIDWEST CO.
PLANT AT LARAMIE, WYO.



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STATEMENT SHOWING BASE RATES AS COMPARED WITH PRESENT RATES TO OGDEN, SALT LAKE CITY AND PROVO, UTAH FROM CEMENT MILLS LOCATED AT LARAMIE, WYOMING, DEVILS SLIDE AND SALT LAKE CITY, UTAH

Destination	Base	Laramie, Wyoming (Note A) Present	Increase	Base	Devils Slide, Utah (Note B) Present	Increase	Base	Salt Lake City, Utah (Note B) Present	Increase
Ogden	34	55.2 (E)	21.2	5½	8½ (E)	3	8½	13 (E)	4½
					5 (C)	1/2 (C)	6½	10½(F)	4
Salt Lake City	34	55.2 (E)	21.2	8	12 (E)	4	-	-	-
				(C)6½	6 (C)	1/2			
Provo	34	55.2 (E)	21.2	10	15 (D)	5	12	18 (E)	6
							6½(D)	10.5 (D)	4

NOTES:
A - Includes increases Ex Parte 162, 166, 168 and 175.
B - Includes only increases Ex Parte 162, 166 and 168.
C - 100,000 Lb. Minimum. Expires 12/31/54 - then returns to 7¢ on 100,000 lb. Including Ex Parte 168.
D - 50,000 Lb. Minimum.
E - 40,000 Lb. Minimum.
F - 100,000 Minimum.

AUTHORITIES: UP Tariff 6027 F. I.C.C. 5154
Local Utah Fr Tariff I-Q. I.C.C. #4.

[fol. 644]

STATEMENT SHOWING RELATIONSHIPS BETWEEN LARAMIE, WYOMING AND DEVILS SLIDE, UTAH

UNDER THE BASE RATES AND THE PRESENT RATES

Column	(1)	(2)	(3)	(4)	(5)	(6)	(7)
	BASE RATES			PRESENT RATES			
Destination	Laramie	Devils Slide	Laramie over Devils Slide	Laramie	Devils Slide	Laramie over Devils Slide	INCREASE in Column 6 Over Column 3
Ogden	34	5½	28½	55.2(AE)	8½ (BE)	46.7	18.2
					5 (BC)	50.2	21.7
Salt Lake City	34	8	26	55.2(AE)	12 (BE)	43.2	17.2
		6½ (C)	27½		6 (BC)	49.2	21.7
Provo	34	10	24	55.2(AE)	15 (BD)	40.2	16.2

NOTES: A - Includes increases Ex Parte 162, 166, 168 and 175.
B - Includes only increases Ex Parte 162, 166 and 168.
C - 100,000 lb. Minimum. Expires 12/31/54. Then returns to 7¢ on 100,000 lb. Including Ex Parte 168.
D - 50,000 lb. Minimum.
E - 40,000 lb. Minimum.

AUTHORITIES: UP Tariff 6027 F. I.C.C. 5154.
Local Utah Fr. Tariff 1-Q. I.C.C. #4.

I.C.C. Docket No. 31484

STATEMENT SHOWING INTRASTATE MOVEMENT OF COAL, CARLOADS, TO POINTS IN UTAH

DURING MAY, AUGUST, AND NOVEMBER OF 1953 AND FEBRUARY OF 1954

Column	1.	2.	3.	4.	5.	6.
LINE	Destination Line	Cars	Tons	Revenue Under Applicable Rates	Revenue Under Rates Sought	Difference in Revenue Col. 5 vs. Col. 4
1.	Bamberger Railroad Company	190	11,210	$ 26,883.00	$ 30,106.00	$ 3,223.00
2.	Denver and Rio Grande Western R.R. Co.	9483	684,133	1,361,501.00	1,520,675.00	159,174.00
3.	Salt Lake, Garfield and Western Ry. Co.	132	6,529	15,212.00	17,038.00	1,826.00
4.	Tooele Valley Ry. Co.	162	8,875	21,084.00	23,614.00	2,530.00
5.	Union Pacific R.R. Co.	1363	74,930	195,353.00	217,496.00	22,143.00
6.	Utah Railway Co.	1	44	114.00	128.00	14.00
7.	Western Pacific R.R. Co.	115	5,642	16,312.00	18,268.00	1,956.00
8.	TOTALS	11446	791,363	$1,636,459.00	$1,827,325.00	$190,866.00

D.&R.G.W. - COAL, CARLOADS - UTAH INTRASTATE

Column	1.	2.	3.	4.	5.	6.	7.	8.	9.
LINE	FROM (UTAH)	TO (UTAH)	KIND OF COAL	CARS	TONS	RATE PER TON OF 2,000 LBS. THRU X-168	REVENUE AS COLLECTED THRU X-168	REVENUE SOUGHT THRU X-175	DIFFERENCE IN REVENUE COL. 8 vs. COL. 7
1.	Banning	Gomex	Slack	1	60	$2.07	$ 124.00	$ 128.00	$ 4.00
2.	"	Salt Lake City	Slack	11	656	2.33	1,528.00	1,710.00	182.00
3.	Wellington	Gomex	Slack	6	391	1.90	743.00	832.00	89.00
4.	"	"	Slack	1	69	2.07	143.00	147.00	4.00
5.	"	Springville	Slack	1	69	2.07	143.00	147.00	4.00
6.	"	"	Lump	2	124	2.70	335.00	375.00	40.00
7.	"	Hale	Slack	25	1,542	2.07	3,192.00	3,282.00	90.00
8.	"	Provo	Slack	69	4,223	1.90	8,024.00	8,987.00	963.00
9.	"	Provo	Slack	52	3,081	2.07	6,378.00	6,556.00	178.00
10.	"	American Fork	Slack	1	46	2.33	107.00	120.00	13.00
11.	"	West Jordan	Slack	11	672	2.33	1,566.00	1,754.00	188.00
12.	"	Salt Lake City	Slack	160	9,931	2.33	23,139.00	25,916.00	2,777.00
13.	"	"	Lump	3	175	2.81	492.00	551.00	59.00
14.	"	Layton	Slack	6	363	2.33	846.00	948.00	102.00
15.	"	Clearfield	Slack	16	968	2.33	2,255.00	2,526.00	271.00
16.	"	Ogden	Slack	4	271	2.33	631.00	707.00	76.00
17.	Price	Spearmint	Slack	1	57	2.33	133.00	149.00	16.00
18.	"	Gomex	Slack	2	128	1.90	243.00	272.00	29.00
19.	"	Hale	Slack	1	46	2.07	95.00	97.00	2.00
20.	"	Orem	Slack	1	58	2.07	120.00	134.00	14.00
21.	"	Lehi	Slack	1	68	2.33	158.00	177.00	19.00
22.	"	West Jordan	Slack	1	56	2.33	130.00	146.00	16.00
23.	"	Sugar House	Slack	45	2,823	2.33	6,578.00	7,367.00	789.00
24.	"	"	Lump	6	325	2.81	913.00	1,023.00	110.00
25.	"	Salt Lake City	Slack	106	6,214	2.33	14,479.00	16,216.00	1,737.00
26.	"	"	Lump	5	259	2.81	728.00	815.00	87.00
27.	"	Layton	Slack	1	49	2.33	114.00	128.00	14.00
28.	"	Evona	Slack	1	49	2.33	114.00	128.00	14.00
29.	"	Ogden	Slack	20	1,115	2.33	2,598.00	2,910.00	312.00
30.	"	"	Lump	2	115	2.86	329.00	368.00	39.00
31.	Kenilworth	Gomex	Slack	2	129	1.90	245.00	274.00	29.00
32.	"	"	Slack	2	108	2.07	224.00	230.00	6.00
33.	"	Hale	Slack	152	10,025	1.90	19,048.00	21,334.00	2,286.00
34.	"	"	Slack	147	9,303	2.07	19,257.00	19,797.00	540.00

D.&R.G.W. (Cont'd) – COAL, CARLOADS – UTAH INTRASTATE

Column	1.	2.	3.	4.	5.	6.	7.	8.	9.
LINE	FROM (UTAH)	TO (UTAH)	KIND OF COAL	CARS	TONS	RATE PER TON OF 2,000 LBS. THRU X-168	REVENUE AS COLLECTED THRU X-168	REVENUE SOUGHT THRU X-175	DIFFERENCE IN REVENUE COL. 8 vs. COL. 7
1.	Raine (Cont'd)	Midvale	Lump	2	120	$2.81	$ 337.00	$ 377.00	$ 40.00
2.	"	West Jordan	Slack	1	57	2.33	133.00	149.00	16.00
3.	"	"	Lump	1	60	2.81	169.00	189.00	20.00
4.	"	Bacchus	Slack	1	57	2.33	133.00	149.00	16.00
5.	"	Sugar House	Slack	15	923	2.33	2,151.00	2,409.00	258.00
6.	"	"	Lump	1	53	2.81	149.00	167.00	18.00
7.	"	Roy	Lump	1	55	2.86	157.00	176.00	19.00
8.	"	Ogden	Lump	1	53	2.86	152.00	170.00	18.00
9.	Mutual	Gomex	Slack	1	68	2.07	141.00	144.00	3.00
10.	"	Eureka	Lump	2	100	2.92	292.00	327.00	35.00
11.	"	Hale	Slack	18	1,112	2.07	2,302.00	2,367.00	65.00
12.	"	Provo	Lump	3	145	2.[illegible]	376.00	421.00	45.00
13.	"	Midvale	Lump	1	44	2.[illegible]	124.00	139.00	15.00
14.	"	West Jordan	Slack	14	859	2.33	2,001.00	2,241.00	240.00
15.	"	Garfield	Lump	2	117	2.92	342.00	383.00	41.00
16.	"	Murray	Lump	4	199	2.81	559.00	626.00	67.00
17.	"	Sugar House	Slack	5	320	2.33	746.00	836.00	90.00
18.	"	"	Lump	2	115	2.81	323.00	362.00	39.00
19.	"	Salt Lake City	Slack	1	67	2.33	156.00	181.00	25.00
20.	"	Ogden	Slack	3	181	2.33	422.00	491.00	69.00
21.	"	"	Lump	18	929	2.86	2,657.00	2,976.00	319.00
22.	Castle Gate	Ephraim	Slack	1	62	2.20	136.00	152.00	16.00
23.	"	Manti	Slack	3	187	2.33	436.00	506.00	70.00
24.	"	Hale	Slack	24	1,536	1.90	2,918.00	3,268.00	350.00
25.	"	"	Slack	35	2,251	2.07	4,660.00	4,790.00	130.00
26.	"	Midvale	Slack	3	209	2.33	487.00	566.00	79.00
27.	"	West Jordan	Slack	1	62	2.33	144.00	168.00	24.00
28.	"	Hannum	Slack	1	42	2.33	98.00	114.00	16.00
29.	"	Bacchus	Slack	1	74	2.33	172.00	200.00	28.00
30.	"	Lead Mine	Slack	1	51	2.33	119.00	138.00	19.00
31.	"	Bingham	Slack	8	551	2.33	1,284.00	1,493.00	209.00
[illegible]	"	Murray	Slack	2	117	2.33	273.00	317.00	44.00
[illegible]	"	Sugar House	Slack	11	666	2.33	1,552.00	1,805.00	253.00
[illegible]	"	"	Lump	2	100	2.81	281.00	315.00	34.00

D.&R.G.W. (Cont'd) – COAL, CARLOADS – UTAH INTRASTATE

Column	1.	2.	3.	4.	5.	6.	7.	8.	9.
LINE	FROM (UTAH)	TO (UTAH)	KIND OF COAL	CARS	TONS	RATE PER TON OF 2,000 LBS. THRU X-168	REVENUE AS COLLECTED THRU X-168	REVENUE SOUGHT THRU X-175	DIFFERENCE IN REVENUE COL. 8 vs COL. 7
1.	Clear Creek (Cont'd)	Salt Lake City (Cont'd)	Lump	11	653	$2.81	$ 1,835.00	$ 2,055.00	$ 220.00
2.	"	Farnsworth	Slack	1	55	2.33	128.00	143.00	15.00
3.	"	Evona	Slack	1	62	2.33	144.00	161.00	17.00
4.	"	Ogden	Slack	14	881	2.33	2,053.00	2,299.00	246.00
5.	Redmond	Gomex	Slack	1	71	1.90	135.00	151.00	16.00
6.	"	Hale	Slack	5	287	2.07	594.00	610.00	16.00
7.	Salina	Gomex	Slack	1	69	2.07	143.00	147.00	4.00
8.	"	Ironton	Slack	2	123	2.07	255.00	262.00	7.00
9.	"	Hale	Slack	16	982	2.07	2,033.00	2,090.00	57.00
10.	"	Salt Lake City	Slack	2	118	2.33	275.00	308.00	33.00
11.	Columbia	Gomex	Slack	1	50	1.90	95.00	106.00	11.00
12.	"	Ironton	Coking	1,126	87,552	1.90	166,349.00	186,311.00	19,962.00
13.	"	Ironton	Slack	57	4,512	2.07	9,340.00	9,602.00	262.00
14.	"	"	Lump	6	424	2.70	1,145.00	1,282.00	137.00
15.	"	Hale	Slack	36	1,860	2.07	3,850.00	3,958.00	108.00
16.	"	Orem	Slack	35	1,935	2.07	4.005.00	4,486.00	481.00
17.	"	Geneva	Coking	5,478	424,281	1.90	806,134.00	902,870.00	96,736.00
18.	"	Salt Lake City	Slack	88	2,326	2.33	5,420.00	6,070.00	650.00
19.	Martin	Salt Lake City	Slack	2	94	2.33	219.00	245.00	26.00
20.	Spring Canyon	West Jordan	Slack	2	108	2.33	252.00	282.00	30.00
21.	"	Bacchus	Slack	2	91	2.33	212.00	237.00	25.00
22.	"	Lark	Lump	1	47	2.92	137.00	153.00	16.00
23.	"	Sugar House	Lump	3	138	2.81	388.00	435.00	47.00
24.	"	Salt Lake City	Slack	29	1,355	2.33	3,157.00	3,536.00	379.00
25.	"	"	Lump	13	600	2.81	1,686.00	1,888.00	202.00
26.	"	Clearfield	Slack	3	148	2.33	345.00	386.00	41.00
27.	"	Roy	Lump	3	136	2.86	389.00	436.00	47.00
28.	Standardville	Sugar House	Slack	4	196	2.33	457.00	512.00	55.00
29.	"	"	Lump	2	86	2.81	242.00	271.00	29.00
30.	"	Salt Lake City	Slack	4	195	2.33	454.00	508.00	54.00
31.	Wattis	Gomex	Slack	1	52	1.90	99.00	111.00	12.00
32.	"	"	Slack	2	107	2.07	221.00	227.00	6.00
33.	"	Spanish Fork	Slack	1	50	2.07	104.00	116.00	12.00
34.	"	Bacchus	Slack	3	148	2.33	345.00	386.00	41.00

RG-2

T.V. - COAL, CARLOADS - UTAH INTRASTATE

Column	1.	2.	3.	4.	5.	6.	7.	8.	9.
LINE	FROM (UTAH)	TO (UTAH)	KIND OF COAL	CARS	TONS	RATE PER TON OF 2,000 LBS. THRU X-168	REVENUE AS COLLECTED THRU X-168	REVENUE SOUGHT THRU X-175	DIFFERENCE IN REVENUE COL. 8 vs COL. 7
1.	Castle Gate District	Tooele	Slack	4	266	$2.33	$ 620.00	$ 694.00	$ 74.00
2.	"	"	Lump	11	638	2.92	1,863.00	2,087.00	224.00
3.	"	International	Slack	146	7,923	2.33	18,461.00	20,676.00	2,215.00
4.	"	"	Lump	1	48	2.92	140.00	157.00	17.00
5.	TOTALS			162	8,875		$21,084.00	$23,614.00	$2,530.00

RG-2.

U.P. (Cont'd) - COAL LOADINGS, CARLOADS - UTAH INTRASTATE

Column	1	2	3	4	5	6	7	8	9
LINE	FROM (UTAH)	TO (UTAH)	KIND OF COAL	CARS	TONS	RATE PER TON OF 2,000 LBS. THRU X-168	REVENUE AS COLLECTED THRU X-168	REVENUE SOUGHT THRU X-175	DIFFERENCE IN REVENUE COL. 8 VS. COL. 7
1	Hiawatha	Honeyville	SLACK	1	52	$2.59	$ 135.00	$ 151.00	$ 16.00
2	Price	"	LUMP	1	52	3.35	174.00	195.00	21.00
3	Rains	Cornish	SLACK	1	52	2.59	135.00	151.00	16.00
4	Castle Gate	"	"	1	44	2.59	114.00	128.00	14.00
5	Clear Creek	"	"	1	42	2.59	109.00	122.00	13.00
6	Royal	"	"	1	54	2.59	140.00	157.00	17.00
7	"	Trenton	"	1	38	2.59	98.00	110.00	12.00
8	Castle Gate	"	"	1	61	2.59	158.00	177.00	19.00
9	Clear Creek	"	"	1	50	2.59	130.00	146.00	16.00
10	Rains	"	"	1	55	2.59	142.00	159.00	17.00
11	Hiawatha	Clearfield	"	13	638	2.33	1,487.00	1,665.00	178.00
12	"	"	LUMP & STOVE	8	377	2.86	1,078.00	1,207.00	129.00
13	"	"	SLACK	5	261	2.33	608.00	681.00	73.00
14	Wellington	"	"	3	197	2.33	459.00	514.00	55.00
15	Castle Gate	"	"	1	50	2.33	117.00	131.00	14.00
16	Mohrland	"	"	5	261	2.33	608.00	681.00	73.00
17	Castle Gate	Layton	"	3	209	2.33	487.00	545.00	58.00
18	Hiawatha	"	"	1	48	2.33	112.00	125.00	13.00
19	"	"	STOVE	5	229	2.86	655.00	734.00	79.00
20	Clear Creek	"	SLACK	1	70	2.33	163.00	183.00	20.00
21	Kenilworth	"	STOVE	2	108	2.86	309.00	346.00	37.00
22	Royal	"	SLACK	1	62	2.33	144.00	161.00	17.00
23	Spring Canyon	"	"	6	297	2.33	692.00	775.00	83.00
24	Standardville	"	"	2	96	2.33	224.00	251.00	27.00
25	Royal	Murray	"	5	400	2.33	932.00	1,044.00	112.00
26	Standardville	"	"	1	49	2.33	114.00	128.00	14.00
27	"	"	LUMP	4	196	2.81	551.00	617.00	66.00
28	Spring Canyon	"	"	5	241	2.81	677.00	758.00	81.00
29	Hiawatha	"	SLACK	1	50	2.33	117.00	131.00	14.00
30	"	"	STOVE	1	39	2.81	110.00	123.00	13.00
31	Rains	"	"	1	59	2.81	166.00	186.00	20.00
32	Hiawatha	Midvale	SLACK	29	1,510	2.33	3,518.00	3,940.00	422.00
33	Royal	"	"	1	59	2.33	137.00	153.00	16.00

R.C. 2

TARIFF AUTHORITIES FOR RATES

D.&R.G.W. Freight Tariff No. 5904-I, I.C.C. No. 756, P.S.C.U. No. 307
" " " " 5904-J, " " 960, " " 382
" " " " 5372-Q, " " 744, " " 294
" " " " 5533-P, " " 743, " " 293
" " " " 6058-E, " " 297,
U.P.R.R. Tariff No. 6020-F, I.C.C. No. 4818, P.S.C.U. No. 595
" " " 6021-E, " " 4699, " " 538
Utah Ry. Co. Freight Tariff No. 2-I, I.C.C. No. 77, P.S.C.U. No. 98

[fol. 651A] RESPONDENTS' EXHIBIT No. 41

I.C.C. DOCKET No. 31484

STATEMENT SHOWING INTERSTATE MOVEMENT OF COAL, CARLOADS, TO POINTS IN UTAH DURING MAY, AUGUST AND NOVEMBER OF 1953 AND FEBRUARY OF 1954

COLUMN	1	2	3	4
LINE	DESTINATION LINE	CARS	TONS	REVENUE
1.	Bamberger R. R. Co.	60	3,264	$ 7,605.00
2.	Denver and Rio Grande Western R.R. Co.	2,105	140,160	897,764.00
3.	Union Pacific R. R. Co.	1,386	87,060	540,732.00
4.	Total	3,551	230,484	$1,446,101.00

520
[fol. 652]

TARIFF AUTHORITIES FOR RATES:

D&RGW Freight Tariff No. 5904-J, I.C.C. No. 960, P.S.C.U. No. 382.

U.P.R.R. Tariff No. 6020-G, I.C.C. No. 5244, P.S.C.U. No. 811.

U.P.R.R. Tariff No. 6074-K, I.C.C. No. 5371, P.S.C.U. No. 833.

S.W.L. Tariff No. 253-C, Agent F. C. Kratzmeir's I.C.C. No. 3886.

T.C.F.B. Tariff No. 1-C, Agent W. J. Prueter's I.C.C. No. 1559.

W.S.T.B. Tariff No. 1-B, Agent W. J. Christie's I.C.C. No. 54, P.S.C.U. No. 3

R.G. 3

I.C.C. DOCKET No. 31469

STATEMENT SHOWING RATES - IN CENTS PER TON OF 2,000 POUNDS - ON BLACK COAL, CARLOADS FROM CASTLE GATE, UTAH TO DESTINATIONS SHOWN, FROM APRIL 30, 1953, TO DATE

COLUMN	1	2	3	4	5	6	7	8	9	10	11
LINE	Date	Spearmint, Utah	Spanish Fork, Utah	West Jordan & Layton, Utah	Salt Lake City Utah	Ogden, Utah	Logan, Utah	Whitney, Idaho	Black-foot, Idaho	Shelley and Idaho Falls, Idaho	Paul, Burley and McMillan, Idaho
1	April 30, 1953	195	175	195	195	195	215	259/12%	383/40¢	400/40¢	405/40¢
2	May 1, 1953	233	207	233	233	233	259	259/12%	383/40¢	400/40¢	405/40¢
3	Present	233	207	233	233	233	259	259/12%	383/40¢	400/40¢	405/40¢

Rates to Spearmint, Spanish Fork, West Jordan, Layton, Salt Lake City and Ogden are published in D.& R.G.W. Tariff No. 5904-J, I.C.C. No. 960.
Rates to Logan are published in D.& R.G.W. Tariff 5372-Q, I.C.C. No. 744.
Rates to balance of the destinations shown are published in D.& R.G.W. Tariff No. 5372-R, I.C.C. No. 937.

R.G. 4

I.C.C. DOCKET No. 31484

STATEMENT SHOWING RATES IN CENTS PER TON OF 2,000 POUNDS - ON BITUMINOUS COAL, CARLOADS, FROM CASTLE GATE AND SUNNYSIDE, UTAH TO WEST JORDAN, MIDVALE, AND SALT LAKE CITY, UTAH, AND PRESTON, IDAHO, FROM APRIL 30, 1953, TO DATE

Page 1 of 1 Page.

COLUMN	1	2	3	4	5	6	7	8	9	10	11	12	13
LINE	Effective Date	TO WEST JORDAN, UTAH				TO MIDVALE AND SALT LAKE CITY, UTAH				TO PRESTON, IDAHO			
		FROM CASTLE GATE, UTAH		FROM SUNNYSIDE, UTAH		FROM CASTLE GATE, UTAH		FROM SUNNYSIDE, UTAH		FROM CASTLE GATE, UTAH		FROM SUNNYSIDE, UTAH	
		Other Than Slack	Slack	Other Than Slack	Slack	Other Than Slack	Slack	Other Than Slack	Slack	Other Than Slack	Slack	Other Than Slack	Slack
1	April 30, 1953	235	195	235	195	235	195	235	195	346/40¢	270/12¢	346/40¢	270/12¢
2	May 1, 1953	281	233	281	233	281	233	281	233	346/40¢	270/12¢	346/40¢	270/12¢
3	Present	281	233	281	233	281	233	281	233	346/40¢	270/12¢	346/40¢	270/12¢

Rates to West Jordan, Midvale, and Salt Lake City, Utah are published in D.& R.G.W. Tariff 5304-J, I.C.C. No. 960.
Rates to Preston, Idaho are published in D.& R.G.W. Tariff No. 5372-R, I.C.C. No. 907.

R.G. 4-A

I.C.C. DOCKET NO. 31484

STATEMENT SHOWING COMPARISON OF UTAH INTRASTATE RATES VS. INTERSTATE RATES ON COAL, CARLOADS, FROM CASTLE GATE, UTAH, TO REPRESENTATIVE POINTS IN UTAH AND IDAHO.

BITUMINOUS COAL - RATES IN CENTS PER TON OF 2,000 POUNDS

FROM	DISTANCE	TO	June 30, 1946		April 30, 1953		May 1, 1953 (Present Rates)	
			Other than Slack	Slack	Other than Slack	Slack	Other than Slack	Slack
Castle Gate, Utah	224	Logan, Utah	250	175	300	215	346	259
	241	Lewiston, Utah	250	175	300	215	346	259
	192	Garland, Utah	250	175	300	215	346	259
	243	Franklin, Idaho	250	175	346/40¢	259/12¢	346/40¢	259/12¢
	248	Whitney, Idaho	250	175	346/40¢	259/12¢	346/40¢	259/12¢

TARIFF AUTHORITIES FOR RATES:

D&RGW Tariff 5533-P; I.C.C. No. 743; PSCU No. 293.
D&RGW Tariff 5533-Q; I.C.C. No. 908.

R.G. 5

I.C.C. DOCKET NO. 31484

STATEMENT SHOWING RATES ON COAL, CARLOADS, FROM CASTLE GATE, UTAH TO UTAH BORDER STATIONS VERSUS RATES TO FIRST INTERSTATE POINT BEYOND

BITUMINOUS COAL – RATES IN CENTS PER TON OF 2,000 POUNDS

TO	DISTANCE	June 30, 1946			April 30, 1953			May 1, 1953 (Present Rates)		
		OTHER THAN COKING COAL OR SLACK	COKING COAL	SLACK	OTHER THAN COKING COAL OR SLACK	COKING COAL	SLACK	OTHER THAN COKING COAL OR SLACK	COKING COAL	SLACK
U.P.										
Portage.....Utah	209	250	–	175	300	–	215	346	–	259
Woodruff.....Idaho	213	250	–	185	346/40¢	–	270/12%	346/40¢	–	270/12%
U.P.										
Uvada.....Utah	322	450	435	350	500	485	400	555	540	454
Lien.....Nevada	326	460	435	360	565/40¢	540	464/40¢	565/40¢	540	464/40¢
W.P.										
Wendover.....Utah	237	400	–	350	450	–	400	506	–	454
Pilot.....Nevada	254	410	–	360	515/40¢	–	464/40¢	515/40¢	–	464/40¢
S.P.										
Lucin.....Utah	254	400	–	350	450	–	400	505	–	454
Tecoma.....Nevada	266	410	–	360	515/40¢	–	464/40¢	515/40¢	–	464/40¢
D&RGW										
Westwater.....Utah	152	220	–	210	260	–	250	308	–	297
Mack.....Colo.	161	263	–	225	360/40¢	–	313/12%	360/40¢	–	313/12%

TARIFF AUTHORITIES FOR RATES:

D&RGW Tariff 5372-Q; I.C.C. No. 744; PSCU No. 294 (Portage and Woodruff)
D&RGW Tariff 5372-R; I.C.C. No. 907; (Woodruff)
D&RGW Tariff 5533-P; I.C.C. No. 743; PSCU No. 293 (Uvada, Lien, Wendover, Pilot, Lucin and Tecoma)
D&RGW Tariff 5533-Q; I.C.C. No. 908; (Lien, Pilot and Tecoma)
D&RGW Tariff 5904-I; I.C.C. No. 766; PSCU No. 307 (Westwater and Mack)
D&RGW Tariff 5904-J; I.C.C. No. 960; PSCU No. 382 (Westwater and Mack)

R.G. 6

RESPONDENTS' EXHIBIT NO. 45

I.C.C. DOCKET NO. 31484

STATEMENT SHOWING MOVEMENT, DURING THE MONTHS OF JANUARY THROUGH APRIL OF 1954, OF COKING COAL FROM CARBONDALE AND SOMERSET, COLO., TO GENEVA, UTAH, AND FROM COLUMBIA, UTAH TO GENEVA, UTAH, AND THE AMOUNT OF REVENUE COLLECTED THEREON. STATEMENT ALSO SHOWS THE AMOUNT OF REVENUE THAT WOULD HAVE BEEN COLLECTED HAD THE INCREASE UNDER X-175 BEEN APPLICABLE. THE X-175 INCREASE WAS REMOVED FROM COLORADO ORIGINS ACCOUNT NOT APPLICABLE FROM UTAH ORIGINS

LINE	Column 1 From	2 To	3 Tons	4 Rate per Ton of 2,000 lbs. Thru X-168	5 Revenue as Collected Thru X-168	6 Revenue Sought Thru X-175	7 Difference In Revenue Col. 6 vs Col. 5	8 Tariff Authority
1	Carbondale, Colo.	Geneva, Utah	25,200	$2.90	$ 73,080.00	$ 81,850.00	$ 8,770.00	) D.&R.G.W. Freight Tariff No. 5904-J I.C.C. No. 960, P.S.C.U. No. 382)
2	Somerset, Colo.	Geneva, Utah	22,146	$2.90	64,223.00	71,930.00	7,707.00	
3	Columbia, Utah	Geneva, Utah	275,705	$1.90	523,840.00	586,701.00	62,861.00	
4	TOTAL		323,051		$661,143.00	$740,481.00	$79,338.00	

RG-6A

I.C.C. DOCKET NO. 31484

TOTAL TONNAGE OF COAL DURING THE YEAR 1953 ORIGINATING ON D.&R.G.W. R.R., CARBON COUNTY RAILWAY AND UTAH RAILWAY IN UTAH, SEGREGATED AS TO INTERSTATE AND INTRASTATE TRAFFIC, THE LATTER BROKEN DOWN TO INDICATE TONNAGES OF DOMESTIC AND INDUSTRIAL COAL.

STATEMENT INCLUDES ONLY TONNAGES ON WHICH FREIGHT CHARGES WERE ASSESSED.

Total Revenue Tonnage	5,891,084 Tons
Interstate	3,196,501 Tons
Utah Intrastate	2,694,583 Tons
Of Utah Intrastate	2,250,952 Tons was Industrial Coal
	9,723 Tons was Railroad Company Coal Moving on Revenue Billing
	433,908 Tons was Domestic Coal

I.C.C. Docket No. 31484

STATEMENT SHOWING CARBON COUNTY MINE PRICES, FREIGHT RATE FROM CASTLE GATE GROUP TO SALT LAKE AND SALT LAKE CITY RETAIL COAL PRICES FOR DATES SHOWN

	Mine Price Per Net Ton	Freight Rate From Castle Gate Group Per Net Ton	Retail Price Per Net Ton
March 17, 1953			
Lump - 10"	$ 5.45	$ 2.35	$ 12.99
Nut	5.40	2.35	12.48
Slack-1" stoker oil treated	5.45	1.95	11.52
Slack-1" stoker-dry	4.95	1.95	10.60
December 10, 1953			
Lump - 10"	$ 6.75	$ 2.81	$ 13.50
Nut	5.90	2.81	13.00
Slack-1" stoker oil treated	5.95	2.33	12.03
Slack-1" stoker-dry	5.45	2.33	11.11
February 1, 1954			
Lump - 10"	$ 5.45	$ 2.81	$ 13.50
Nut	5.40	2.81	13.00
Slack-1" stoker oil treated	5.45	2.33	12.03
Slack-1" stoker-dry	4.95	2.33	11.11

I.C.C. DOCKET NO. 31484

STATEMENT SHOWING INTRASTATE MOVEMENT OF COKE, CARLOADS, TO POINTS IN UTAH DURING MAY, AUGUST AND NOVEMBER OF 1953 AND FEBRUARY OF 1954

COLUMN	1	2	3	4	5	6
LINE	DESTINATION LINE	CARS	TONS	REVENUE UNDER APPLICABLE RATE	REVENUE UNDER RATES SOUGHT	DIFFERENCE IN REVENUE COL. 5 VS. COL 4
1	BAMBERGER R.R. CO.	2	51	$ 69.00	$ 77.00	$ 8.00
2	DENVER & RIO GRANDE WESTERN R.R. CO	142	5355	7,633.00	8,550.00	917.00
3	TOOELE VALLEY RY. CO.	142	5304	10,125.00	11,339.00	1,214.00
4	UNION PACIFIC R.R. CO.	274	10116	10,044.00	11,249.00	1,205.00
5	TOTALS	560	20826	$27,871.00	$31,215.00	$3,344.00

RG-10

[Fol. 660A]

TARIFF AUTHORITIES FOR RATES

D.&R.G.W. Freight Tariff No. 5904-I, I.C.C. No. 766, P.S.C.U. No. 307.
D.&R.G.W. Freight Tariff No. 5904-J, I.C.C. no. 960, P.S.C.U. No. 382.
P.S.F.B. Tariff No. 12-J, Agent J. P. Haynes' I.C.C. No. 1374, P.S.C.U. No. 162.
U.P.R.R. Tariff No. 7191-D I.C.C. No. 5280, P.S.C.U. No. 772.
U.P.R.R. Tariff No. 7191-E, I.C.C. No. 5335, P.S.C.U. No. 816.

529

I.C.C. DOCKET No. 31484

STATEMENT SHOWING INTERSTATE MOVEMENT OF COKE, CARLOADS, TO POINTS IN UTAH DURING MAY, AUGUST AND NOVEMBER OF 1953 AND FEBRUARY OF 1954

COLUMN	1	2	3	4
LINE	DESTINATION LINE	CARS	TONS	REVENUE
1	Denver and Rio Grande Western R.R. Co.	276	10,207	$ 118,993.00
2	Tooele Valley Ry. Co.	2	139	1,131.00
3	Union Pacific R. R. Co.	253	9,217	110,964.00
4	TOTAL	531	19,563	$ 231,088.00

R.G. 11

STATEMENT SHOWING COMPARISON OF UTAH INTRASTATE RATES VS. INTERSTATE RATES ON COKE, CARLOADS, TO REPRESENTATIVE POINTS IN UTAH AND IDAHO

Columns:	1	2	3	4	5	6	7
				RATES IN CENTS PER TON OF 2,000 POUNDS			
Line	FROM	MILEAGE	TO	June 30, 1946 Base	April 30, 1953	May 1, 1953	Present
1	Itonton.....Utah	127	Garland.....Utah	225, #200	265, #240	313, #286	313, #286
2		159	Logan.....Utah	225, #200	265, #240	313, #286	313, #286
3		176	Lewiston....Utah	225	265	313	313
4		183	Whitney.....Ida.	240	335 Plus 40	335 Plus 40	335 plus 40
5		186	Preston.....Ida.	240	335 Plus 40	335 Plus 40	335 Plus 40
6		220	Pocatello...Ida.	325	427 Plus 40	427 Plus	427 Plus 40
7	Geneva.....Utah	120	Garland.....Utah	225, #200	265, #240	313, #286	313, #286
8		152	Logan.....Utah	225, #200	265, #240	313 #286	313, #286
9		169	Lewiston....Utah	225	265	313	313
10		176	Whitney.....Ida.	240	335, plus 40	335 Plus 40	335 Plus 40
11		179	Preston.....Ida.	240	335, plus 40	335 plus 40	335 plus 40
12		213	Pocatello...Ida.	325	427 plus 40	427 plus 40	427 plus 40
13	Salt Lake City, Utah	77	Garland.....Utah	200, #175	240, #215	286, #259	286, #259
14		109	Logan.....Utah	200, #175	240, #215	286, #259	286, #259
15		126	Lewiston....Utah	200	240	286	286
16		133	Whitney.....Ida.	240	335 Plus 40	335 Plus 40	335 Plus 40
17		136	Preston.....Ida.	240	335 plus 40	335 plus 40	335 plus 40
18		170	Pocatello...Ida.	310	410 plus 40	410 plus 40	410 plus 40

TARIFF AUTHORITIES FOR RATES:

U.P. Tariff No. 7191-C, I.C.C. No. 4518
U.P. Tariff No. 7191-D, I.C.C. No. 5280
U.P. Tariff No. 7191-E, I.C.C. No. 5335

Applies only on Pea Coke and Coke Breeze.

I.C.C. Docket No. 31484

Statement showing Intrastate movement of Ores and Concentrates to points in Utah During May, August and November of 1953 and February of 1954.

	Column 1	2	3	4	5	6
LINE	Destination Line	Cars	Tons	Revenue under Applicable Rates	Revenue under Rates Sought	Difference in Revenue Column 5 vs. Column 4
1	Denver and Rio Grande Western R.R. Co.	2270	137553	$114,283.00	$131,426.00	$17,143.00
2	Tooele Valley Ry. Co.	111	6058	6,080.00	6,993.00	913.00
3	Union Pacific R.R. Co.	891	51465	70,210.00	80,744.00	10,534.00
4	Total	3272	195076	$190,573.00	$219,163.00	$28,590.00

[fol. 663A]

TARIFF AUTHORITY

1 - D&RGW Tariff 6000-F, ICC 841
2 - Local Utah Tariff 6-G, J. A. Roubinek, Agent, ICC 5
3 - U.P. Tariff 6015-J, ICC 5314
4 - P.S.F.B. 33-Q, J. P. Haynes, Agent, ICC 1386

I.C.C. Docket No. 31494

Statement showing interstate movement of Ores and Concentrates
to points in Utah during May, August and November 1953 and February of 1954.

Page 1 of 5 pages

Column	1	2	3	4	5	6
LINE	Destination line	Cars	Tons	Revenue as Collected Thru I.-168	Revenue as Collected Thru I.-175	Difference in Revenue Column 5 vs. Column 4
1	Denver and Rio Grande Western R.R. Co.	81	4763	21,433.00	23,252.00	1,819.00
2	Toole Valley Ry. Co.	378	20684	136,733.00	157,236.00	20,502.00
3	Union Pacific R.R. Co.	96	5588	33,553.00	38,458.00	4,905.00
4	Total	555	31035	$191,719.00	$218,945.00	$27,226.00

I.C.C. DOCKET NO. 31484

STATEMENT SHOWING HISTORY OF RATES (IN CENTS PER TON OF 2,000 POUNDS) ON ORES AND CONCENTRATES FROM EUREKA, UTAH TO MIDVALE AND GARFIELD, UTAH, FROM MAY 1, 1942 TO DATE.

Columns:	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
	EFFECTIVE	TARIFF		VALUATION PER TON OF 2,000 POUNDS, NOT EXCEEDING:															
Line	DATE	AUTHORITY	TO	$3.50	$5	$6.50	$8	$10	$15	$20	$25	$30	$40	$50	$60	$70	$80	$90	$100
1.	May 1, 1942	4	Midvale.....Utah)	100	100	100	100	100	110	125	150	159	186	212	239	265	292	318	345
2			Garfield.....Utah)	x 60	x 60	# 75	# 90												
3	May 15, 1943	4	Midvale.....Utah)	100	100	100	100	100	110	125	150	150	175	200	225	250	275	300	325
4			Garfield.....Utah)	x 60	x 60	# 75	# 90												
5	January 15, 1944	5	Midvale.....Utah)	@100	@100	@100	@100	100	110	125	150	150	175	200	225	250	275	300	325
6			Garfield.....Utah)	& 60	& 60	$ 75	$ 90												
7	July 11, 1946	5	Midvale.....Utah)	@100	@100	@100	@100	100	110	125	150	159	186	212	239	265	292	318	345
8			Garfield.....Utah)	& 60	& 60	$ 75	$ 90												
9	February 25,1947	6	Midvale.....Utah)	@100	@100	@100	@100	100	110	125	150	180	210	240	270	300	330	360	390
10			Garfield.....Utah)	& 60	& 60	$ 75	$ 90												
11	February 25, 1952	6	Midvale.....Utah)	@100	@100	@100	@100	100	110	125	150	180	210	240	270	300	330	360	390
12			Garfield.....Utah)	& 60	& 60	$ 75	$ 90												
13	May 1, 1953	7	Midvale.....Utah)	@156	@156	@156	@156	@156	@171	@194	@227	@227	@259	@292	@324	@356	@389	@421	@454
14			Garfield.....Utah)	& 93	& 93	$117	$140												
15	Present Rates	7	Midvale.....Utah)	@156	@156	@156	@156	@156	@171	@194	@227	@227	@259	@292	@324	@356	@389	@421	@454
16			Garfield.....Utah)	& 93	& 93	$117	$140												

EXPLANATION OF REFERENCE MARKS:

x - Applies only on ore and slag.
\# - Applies only on ore, mill dump tailings and slag.
@ - Minimum weight 60,000 pounds.
& - Minimum weight 100,000 pounds.
$ - Minimum weight 80,000 pounds.

TARIFF AUTHORITIES:

4 - Agent F. W. McManus' Tariff No. 6-E, I.C.C. No. 2
5 - Agent F. W. McManus' Tariff No. 6-F, I.C.C. No. 3
6 - Agent L. F. Mack's Tariff No. 6-F, I.C.C. No. 3
7 - Agent J. A. Roubinek's Tariff No. 6-G, I.C.C. No. 5

RD-15-A

[Vol. 665.]

RESPONDENTS' EXHIBIT No. 54

I.C.C. DOCKET No. 31484

STATEMENT SHOWING HISTORY OF RATES (IN CENTS PER TON OF 2,000 POUNDS) ON ORES AND CONCENTRATES FROM EUREKA, UTAH TO INTERNATIONAL, UTAH, VIA D&RGW, SALT LAKE CITY, UTAH, WP, WARNER, UTAH, THENCE TV - FROM MAY 1, 1942

Columns: 1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
Line / EFFECTIVE DATE	TARIFF AUTHORITY	TO	VALUATION PER TON OF 2,000 POUNDS, NOT EXCEEDING:															
			$3.50	$5	$6.50	$8	$10	$15	$20	$25	$30	$40	$50	$60	$70	$80	$90	$100
1			90	90	90	90	100	110	125	150	159	186	212	239	265	292	318	345
2 May 1, 1942	5		x 75	x 75	x 75	& 99												
3			& 99	& 99	& 99													
4			90	90	90	90	100	110	125	150	159	186	212	239	265	292	318	345
5 October 1, 1942	5		# 75	# 75	# 75	& 99												
6			& 99	& 99	& 99													
7			90	90	90	90	100	110	125	150	150	175	200	225	250	275	300	325
8 May 15, 1943	5		# 75	# 75	# 75	& 99												
9			& 99	& 99	& 99													
10			90	90	90	90	100	110	125	150	159	186	212	239	265	292	318	345
11 July 11, 1946	5		# 75	# 75	# 75	& 99												
12			& 99	& 99	& 99													
13			90	90	90	90	100	110	125	150	180	210	240	270	300	330	360	390
14 February 25, 1947	5	International, Utah	# 75	# 75	# 75	& 99												
15			& 99	& 99	& 99													
16			90	90	90	90	100	110	125	150	180	210	240	270	300	330	360	390
17 February 25, 1952	5		# 75	# 75	# 75	& 99												
18			& 99	& 99	& 99													
19			140	140	140	140	156	171	194	227	227	259	292	324	356	389	421	454
20 May 1, 1953	5		# 117	# 117	# 117													
21			& 154	& 154	& 154	& 154												
22			140	140	140		156	171	194	227	227	259	292	324	356	389	421	454
23			# 117	# 117	# 117	# 140												
24 Present Rates	5		& 154	& 154	& 154	& 154												
25																		

EXPLANATION OF REFERENCE MARKS:

\# Applies only on ore and mill dump tailings, minimum weight 80,000 pounds.
x Applies only on ore.
& Applies also on sulphurettes and precipitates, minimum weight 40,000 pounds.
Minimum Weight 100,000 pounds.

TARIFF AUTHORITY:

5 - D&RGW Tariff No. 6000-F, I.C.C. No. 641

I.C.C. Docket No. 31484

STATEMENT SHOWING HISTORY OF RATES IN CENTS PER TON OF 2,000 POUNDS, ON ORES AND CONCENTRATES, CARLOADS, TO MIDVALE, UTAH, FROM LARK AND (1) LEAD MINE, UTAH FROM MAY 1, 1942 TO DATE.

LINE	COLUMNS: 1	2	3	4	5	6	7	8	9	10
	EFFECTIVE DATE	TARIFF AUTHORITY	TO	VALUATION PER TON OF 2,000 POUNDS, NOT EXCEEDING						
				$15	$20	$25	$30	$50	$75	$100
1	May 1, 1942	5	Midvale.....Utah	40	55	90	127	127	148	170
2	May 15, 1943	5		40	55	90	120	120	140	160
3	November 29, 1943	5		40	55	90	120	120	140	160
4				#30	—	—	—	—	—	—
5	July 11, 1946	5		40	55	90	127	127	148	170
6				#30	—	—	—	—	—	—
7	January 1, 1947	5		50	90	90	127	127	148	170
8				#30	—	—	—	—	—	—
9	January 10, 1947	5		50	55	90	127	127	148	170
10				#30	—	—	—	—	—	—
11	February 25, 1947	5		50	55	90	144	144	168	192
12				#30	—	—	—	—	—	—
13	March 29, 1947	5		50	55	90	144	144	168	192
14				#30	#50	#50	#55	—	—	—
15	June 18, 1949	5		50	55	90	144	144	168	192
16				#30	#50	#50	#55	#60	—	—
17	February 25, 1952	5		50	55	90	144	144	168	192
18				#30	#50	#50	#55	#60	—	—
19	May 1, 1953	5		78	85	140	187	187	214	240
20				#46	#65	#65	#71	#78	—	—
21	Present Rates	5		78	85	140	187	187	214	240
22				#46	#65	#65	#71	#78	—	—

(1) - Lark basis of rates established from Lead Mine on May 1, 1948. Prior thereto Bingham, Utah rates applied from Lead Mine under intermediate application.

\# - Applies only on Crude Milling and Smelting Ore , Minimum Weight 80,000 Pounds.

TARIFF AUTHORITY:

5 - D.&R.G.W. Tariff 6000-F, I.C.C. 641.

RD-15-C

I.C.C. Docket No. 31484

STATEMENT SHOWING HISTORY OF RATES IN CENTS PER TON OF 2,000 POUNDS ON ORES AND CONCENTRATES FROM PARK CITY, UTAH, TO MIDVALE, GARFIELD, AND INTERNATIONAL, UTAH, FROM MAY 1, 1942, TO DATE

LINE	COLUMNS: 1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
	EFFECTIVE DATE	TARIFF AUTHORITY	TO	Valuation Per Ton of 2,000 Pounds, Not Exceeding:															
				$6	$7	$8	$9	$10	$15	$20	$25	$30	$40	$50	$60	$70	$80	$90	$100
1	May 1, 1942	5	Midvale.....Utah)	& 80	& 85	& 90	& 95	&100	&110	&125	&150	&159	&186	&212	&212	&239	&239	&265	&265
2			Garfield.....Utah)	x 75	x 75	x 75	* 90	* 90	* 90	* 90	*115	*122	*148	*159	*159	*186	*186	*212	*212
3			International..Utah)				x 75	x 75	x 75										
4	May 15, 1943	5	Midvale.....Utah)	& 80	& 85	& 90	& 95	&100	&110	&125	&150	&150	&175	&200	&200	&225	&225	&250	&250
5			Garfield.....Utah)	x 75	x 75	x 75	* 90	* 90	* 90	* 90	*115	*115	*140	*150	*150	*175	*175	*200	*200
6			International..Utah)				x 75	x 75	x 75										
7	July 11, 1946	5	Midvale.....Utah)	& 80	& 85	& 90	& 95	&100	&110	&125	&150	&159	&186	&212	&212	&239	&239	&265	&265
8			Garfield.....Utah)	x 75	x 75	x 75	* 90	* 90	* 90	* 90	*115	*122	*148	*159	*159	*186	*186	*212	*212
			International..Utah)				x 75	x 75	x 75										
10	February 25, 1947	6	Midvale.....Utah)	& 80	& 85	& 90	& 95	&100	&110	&125	&150	&180	&210	&240	&240	&270	&270	&300	&300
11			Garfield.....Utah)	x 75	x 75	x 75	* 90	* 90	* 90	* 90	*115	*138	*168	*180	*180	*210	*210	*240	*240
12			International..Utah)				x 75	x 75	x 75										
13	February 25,1952	6	Midvale.....Utah)	& 80	& 85	& 90	& 95	&100	&110	&125	&150	&180	&210	&240	&240	&270	&270	&300	&300
14			Garfield.....Utah)	x 75	x 75	x 75	* 90	* 90	* 90	* 90	*115	*138	*168	*180	*180	*210	*210	*240	*240
15			International..Utah)				x 75	x 75	x 75										
16	May 1, 1953	6	Midvale.....Utah)	&124	&132	&140	&148	&156	&171	&194	&227	&227	&259	&292	&292	&324	&324	&356	&356
17			Garfield.....Utah)	x117	x117	x117	*140	*140	*140	*140	*179	*179	*214	*227	*227	*259	*259	*292	*292
18			International..Utah)				x117	x117	x117										
19	Present Rates	7	Midvale.....Utah)	&124	&132	&140	&148	&156	&171	&194	&227	&227	&259	&292	&292	&324	&324	&356	&356
20			Garfield.....Utah)	x117	x117	x117	*140	*140	*140	*140	*179	x179	*214	*227	*227	*259	*259	*292	*292
21			International..Utah)				x117	x117	x117										

EXPLANATION OF REFERENCE MARKS:

x - Applicable only on ore for milling or concentration, minimum weight 100,000 pounds.
& - Minimum weight 40,000 pounds.
* - Minimum weight 100,000 pounds.

TARIFF AUTHORITY:

5 - D. & R. G. W. Tariff No. 6000-P, I.C.C. No. 641.
6 - U. P. R. R. Tariff No. 2047-L, I.C.C. No. 4956.
7 - U. P. R. R. Tariff No. 6015-J, I.C.C. No. 5314.

RG-15-D

I.C.C. DOCKET NO. 31484

STATEMENT SHOWING "FIXED METAL PRICE RULE" PUBLISHED IN TARIFFS CONTAINING RATES ON ORES AND CONCENTRATES WHICH GOVERNS THE RATE UPON WHICH FREIGHT CHARGES ON ORES AND CONCENTRATES ARE ASSESSED.

* * * * *

MANNER OF WAYBILLING SHIPMENTS

Ore and Concentrates, or other commodities, for which rates based on value per ton are published in this Tariff, and as amended, will be waybilled at rates applying on valuation of $100.00 per ton, or when no rate is provided for that value, at the rate applicable for the highest value shown. (For waybilling purposes only).

RULES FOR DETERMINING RATE UPON WHICH FREIGHT CHARGES SHALL BE ASSESSED

(a) After arrival at smelter or other industry to which shipment is consigned and settlement between shipper and consignee is made on basis of return or assay by said smelter or other industry, the value so determined and upon which such settlement is made (See Exception), without deduction for freight charges, shall be certified to the carrier, and rate shall be revised in accordance with such certified value. When rates are not shown for exact valuation which is certified by smelter or other industry, as provided above, use rates for next greater valuation for which rates are shown in this tariff, and as amended.

(b) Carriers reserve the right to verify valuation by special assay or otherwise.

EXCEPTION - The actual value of recoverable copper, lead or zinc, for the purpose of calculating settlements between shipper and consignee in order to determine and apply rates named in this Tariff, and as amended, but not for the purpose of liability for loss or damage, shall be deemed to be:

Copper	14 cents per pound
Lead	7 cents per pound
Zinc	8 cents per pound

* * * * *

NOTE - The above rule is as shown in Item 130-E of D&RGW Freight Tariff No. 6000-F, I.C.C. No. 641, P.S.C.U. No. 242.

I.C.C. DOCKET NO. 31484

STATEMENT SHOWING MOVEMENT VIA D.&R.G.W. BY MONTHS FOR THE ENTIRE YEAR OF 1953, COMPARING THE MONTHLY MOVEMENT PRIOR TO MAY 1ST, WITH THE MONTHLY MOVEMENT THEREAFTER, OF CRUDE ORE FROM EUREKA, UTAH TO GARFIELD, UTAH BROKEN DOWN AS TO THE VALUATION PER TON UPON WHICH FREIGHT CHARGES WERE ASSESSED, AND THE NUMBER OF CARS, TONS, RATE, AND REVENUE ACCRUING UNDER EACH OF THE SEPARATE VALUATION BLOCKS.

LINE	Column 1	2			3			4			5			6		
1		VALUATION NOT EXCEEDING $5.00 NET TON Rate 60¢ Ton			VALUATION NOT EXCEEDING $6.50 NET TON Rate 75¢ Ton			VALUATION NOT EXCEEDING $8.00 NET TON Rate 90¢ ton			VALUATION NOT EXCEEDING $10.00 NET TON Rate $1.00 Ton			VALUATION NOT EXCEEDING $15.00 NET TON Rate $1.10 Ton		
2	1953	Cars	Tons	Revenue	Cars	Tons	Revenue	Cars	Tons	Revenue	Cars	Tons	Revenue	Cars	Tons	Revenue
3	January	16	900	$ 540.00	96	5,601	$4,201.00	9	550	$495.00	—	—	—	—	—	—
4	February	77	4,448	2,669.00	33	1,978	1,483.00	—	—	—	—	—	—	—	—	—
5	March	62	3,525	2,115.00	73	4,352	3,264.00	1	65	59.00	—	—	—	—	—	—
6	April	207	12,335	7,401.00	5	287	215.00	5	288	259.00	9	528	$528.00	—	—	—
7	TOTAL	362	21,208	$12,725.00	207	12,218	$9,163.00	15	903	$813.00	9	528	$528.00	—	—	—
8	Average per month	91	5,302	$ 3,181.00	52	3,055	$2,291.00	4	226	$203.00	2	132	$132.00	—	—	—
9		Rate 93¢ Ton			Rate $1.17 Ton			Rate $1.40 Ton			Rate $1.56 Ton			Rate $1.71 Ton		
10	May	30	1,764	$ 1,640.00	—	—	—	—	—	—	—	—	—	—	—	—
11	June	125	7,304	6,793.00	—	—	—	—	—	—	—	—	—	—	—	—
12	July	148	8,602	7,998.00	—	—	—	—	—	—	—	—	—	—	—	—
13	August	107	6,375	5,933.00	1	63	$ 74.00	—	—	—	—	—	—	—	—	—
14	September	92	5,334	4,960.00	—	—	—	—	—	—	—	—	—	—	—	—
15	October	114	6,772	6,298.00	19	1,086	1,271.00	3	198	$278.00	2	124	$194.00	1	71	$121.00
16	November	77	4,373	4,066.00	1	55	65.00	—	—	—	1	54	84.00	—	—	—
17	December	112	6,601	6,138.00	3	186	218.00	4	253	354.00	—	—	—	—	—	—
18	TOTAL	805	47,125	$43,826.00	24	1,390	$1,628.00	7	451	$632.00	3	178	$278.00	1	71	$121.00
19	Average per month	101	5,891	$ 5,478.00	3	174	$ 204.00	1	6	$ 8.00	—	22	$ 35.00	—	9	$ 15.00

[fol. 669A]

I.C.C. DOCKET NO. 31484

STATEMENT SHOWING MOVEMENT VIA D.&R.G.W. BY MONTHS FOR THE ENTIRE YEAR OF 1953, COMPARING THE MONTHLY MOVEMENT PRIOR TO MAY 1ST, WITH THE MONTHLY MOVEMENT THEREAFTER, OF CRUDE ORE FROM LARK, UTAH TO MIDVALE, UTAH BROKEN DOWN AS TO THE VALUATION PER TON UPON WHICH FREIGHT CHARGES WERE ASSESSED, AND THE NUMBER OF CARS, TONS, RATE, AND REVENUE ACCRUING UNDER EACH OF THE SEPARATE VALUATION BLOCKS.

LINE	Column 1	2 VALUATION NOT EXCEEDING $15.00 NET TON			3 VALUATION NOT EXCEEDING $25.00 NET TON			4 VALUATION NOT EXCEEDING $30.00 NET TON			5 VALUATION NOT EXCEEDING $50.00 NET TON			6 VALUATION NOT EXCEEDING $75.00 NET TON		
1		Rate 30¢ Ton			Rate 50¢ Ton			Rate 55¢ Ton			Rate 60¢ Ton			Rate $1.08 Ton		
2	1953	Cars	Tons	Revenue	Cars	Tons	Revenue	Cars	Tons	Revenue	Cars	Tons	Revenue	Cars	Tons	Revenue
3	January	44	2,313	$ 694.00	413	23,186	$11,594.00	4	194	$ 107.00	2	93	$ 56.00	—	—	—
4	February	71	3,746	1,124.00	337	18,977	9,490.00	2	113	62.00	1	48	29.00	1	46	$78.00
5	March	52	2,652	795.00	333	19,298	9,650.00	40	2,436	1,340.00	2	131	78.00	—	—	—
6	April	43	2,199	660.00	436	24,721	12,362.00	2	111	61.00	6	334	200.00	—	—	—
7	TOTAL	210	10,910	$ 3,273.00	1,519	86,182	$43,096.00	48	2,854	$1,570.00	11	606	363.00	1	46	$78.00
8	Average per month	53	2,728	$ 818.00	380	21,546	$10,774.00	12	714	$ 393.00	3	152	91.00	—	12	$20.00
9		Rate 46¢ Ton			Rate 65¢ Ton			Rate 71¢ Ton			Rate 78¢ Ton			Rate $2.14 Ton		
10	May	209	11,674	$ 5,370.00	—	—	—	—	—	—	—	—	—	—	—	—
11	June	459	26,402	12,145.00	4	232	$ 151.00	—	—	—	—	—	—	—	—	—
12	July	349	20,758	9,549.00	4	253	165.00	—	—	—	—	—	—	—	—	—
13	August	353	20,865	9,598.00	1	66	43.00	—	—	—	—	—	—	—	—	—
14	September	496	28,415	13,071.00	4	254	165.00	—	—	—	—	—	—	—	—	—
15	October	610	34,691	15,957.00	8	513	333.00	—	—	—	—	—	—	—	—	—
16	November	440	25,091	11,541.00	2	132	86.00	—	—	—	—	—	—	—	—	—
17	December	292	16,680	7,673.00	2	105	68.00	—	—	—	—	—	—	—	—	—
18	TOTAL	3,208	184,576	$84,904.00	25	1,555	$ 1,011.00	—	—	—	—	—	—	—	—	—
19	Average per month	401	23,072	$10,613.00	3	194	$ 126.00	—	—	—	—	—	—	—	—	—

I.C.C. DOCKET No. 31484

PRICES OF COPPER, LEAD, AND ZINC, IN CENTS PER POUND

Column	1	2	3	4	5
Line	Year	Dates	Copper	Lead	Zinc
1	1942	Average of Year	11.65	6.48	8.25
2	1943	Average of Year	11.65	6.50	8.25
3	1944	Average of Year	11.65	6.50	8.25
4	1945	Average of Year	11.65	6.50	8.25
5	1946	Average of Year	13.69	8.10	8.72
6	1947	Average of Year	20.958	14.673	10.50
7	1948	Average of Year	22.038	18.043	13.589
8	1949	Average of Year	19.202	15.364	12.144
9	1950	Average of Year	21.235	13.296	13.866
10	1951	Average of Year	24.200	17.500	18.000
11	1952	Average of Year	24.200	16.467	16.215
12	1953	Average of Year	28.798	13.489	10.855
13	1954	Present	29.700	14.000	10.25

I.C.C. Docket No. 31484

STATEMENT SHOWING MOVEMENT DURING MONTHS OF AUGUST AND NOVEMBER OF 1953 AND FEBRUARY OF 1954 OF CRUDE URANIUM AND VANADIUM ORES FROM THOMPSON, UTAH TO NADA, COLORADO, AND FROM GREEN RIVER, UTAH TO KALUNITE, UTAH AND THE AMOUNT OF REVENUE COLLECTED THEREON. STATEMENT ALSO SHOWS THE AMOUNT OF REVENUE THAT WOULD HAVE BEEN COLLECTED HAD THE INCREASE UNDER X-175 BEEN APPLICABLE. THE X-175 INCREASE WAS REMOVED TO NADA, COLORADO, ACCOUNT NOT APPLICABLE WHEN DESTINED KALUNITE, UTAH.

Column:	1.	2.	3.	4.	5.	6.	7.	8.	9.
LINE	FROM	TO	MILEAGE	TONS	RATE PER TON OF 2,000 LBS. THRU X-168	REVENUE AS COLLECTED THRU X-168	REVENUE SOUGHT THRU X-175	DIFFERENCE IN REVENUE COL. 7 vs COL. 6	TARIFF AUTHORITY
1	Thompson, Utah	Nada, Colo.	142	354	(1) $2.14	$ 758.00	$ 872.00	$ 114.00	A
2				4,931	(2) 2.65	13,067.00	15,027.00	1,960.00	A
3	Green River, Utah	Kalunite, Utah	186	12,522	(1) 2.33	29,176.00	33,552.00	4,376.00	B
4				1,789	(2) 2.87	5,134.00	5,904.00	770.00	B
5		TOTALS		19,596		$48,135.00	$55,355.00	$7,220.00	

(1) Applicable only on shipments, the combined Vanadium and Uranium content of which does not exceed 1¼ per cent.
(2) Applicable only on shipments, the combined Vanadium and Uranium content of which exceeds 1¼ per cent, but does not exceed 2½ per cent.

A- Item 612 of D. & R. G. W. Freight Tariff No. 6000-F, I.C.C. No. 641, P.S.C.U. No. 242.
B- Item 731-C of D. & R. G. W. Freight Tariff No. 6000-F, I.C.C. No. 641, P.S.C.U. No. 242.

RB-19

I.C.C. DOCKET NO. 31484

STATEMENT SHOWING INTERSTATE MOVEMENT OF
WASTE MATERIALS FOR REMELTING OR REMELTING PURPOSES

DESTINATION LINE	CARS	TONS	REVENUE THRU X-168	REVENUE THRU x-175	DIFFERENCE IN REVENUE THRU X-175 VS. X-168
DENVER & RIO GRANDE WESTERN RR	33	1912	$15,757.00	$18,116.00	$2,359.00
TOOELE VALLEY RY CO	121	7293	47,287.00	54,488.00	7,201.00
UNION PACIFIC RAILROAD CO.	13	617	5,917.00	6,812.00	8 5.00
TOTALS	167	9822	$68,961.00	$79,416.00	$10,455.00

RATES IN CENTS PER TON OF 2000 POUNDS
ON WASTE MATERIALS, CARLOADS, UTAH INTERSTATE

COLUMN	1	2	3	4	5	6	7	8	9	10
LINE	COMMODITY	FROM	TO U. P.	CARS	TONS	RATE THRU X-168	REVENUE THRU X-168	REVENUE AS COLLECTED THRU X-175	DIFFERENCE IN REVENUE COL. 8 VS. COL. 7	TARIFF AUTHORITY
1	SCRAP BATTERY LEAD	POCATELLO, IDAHO	SALT LAKE CITY, UTAH	1	51	$5.00	$255.00	$293.00	$ 38.00	(1)
2	SCRAP BATTERY LEAD	TWIN FALLS, IDAHO	SALT LAKE CITY, UTAH	1	33	6.60	217.00	249.00	32.00	(1)
3	SCRAP BATtery LEAD	BUTTE, MONTANA	SALT LAKE CITY, UTAH	1	52	10.00	520.00	574.00	54.00	(1)
4	SCRAP LEAD	BILLINGS, MONTANA	SALT LAKE CITY, UTAH	1	31	13.60	421.00	484.00	63.00	(3)
5	SCRAP LEAD	CHEYENNE, WYOMING	SALT LAKE CITY, UTAH	1	4,	10.41	470.00	540.00	70.00	(2)
6	SCRAP BATTERY LEAD	TWIN FALLS; IDAHO	SALT LAKE CITY, UTAH	4	166	6.60	1,095.00	1,259.00	164.00	(1)
7	SCRAP BATTERY LEAD	BUTTE, MONTANA	SALT LAKE CITY, UTAH	1	109	10.00	1,090.00	1,253,00	163.00	(1)
8	SCRAP ALUminum	LOS ANGELES CALIFORNIA	GENEVA, UTAH	1	52	15.60	811.00	932.00	121.00	(4)
9	SLAG	GARDENA, CALIFORNIA	MIDVALE, UTAH	1	58	10.45	606.00	696.00	90.00	(5)
10	SCRAP COPPER	BAYSHORE, CALIFORNIA	GENEVA, UTAH	1	20	21.60	432.00	496.00	64.00	(4)

(1) UP 4100-, ICC 5194
(2) CUFB 4-G, Agent W. M. Carey's ICC 26
(3) UP 6044-E, ICC 5285
(4) PSCFB 260-B, Agent J. P. Haynes' ICC 1522
(5) PSCFB 300 and 33-O, Agent J. P. Haynes' ICC Nos. 1439 and 1386

RG-20

I.C.C. DOCKET No. 31484

STATEMENT SHOWING INTRASTATE MOVEMENT OF WASTE MATERIALS
FOR REMELTING OR RESMELTING PURPOSES

Columns:	1	2	3	4	5	6
Line	DESTINATION LINE	CARS	TONS	REVENUE UNDER APPLICABLE RATES	REVENUE UNDER RATES SOUGHT	DIFFERENCE
1	Denver and Rio Grande Western RR Co.	8	392	$301.00	$344.00	$43.00
2	Tooele Valley Ry. Co.	30	1812	$1474.00	$1694.00	$220.00
3	Union Pacific Railroad Co.	3	104	$290.00	$332.00	$42.00
4	TOTALS	41	2308	$2065.00	$2370.00	$305.00

RESPONDENTS' EXHIBIT No. 63

RATES IN CENTS PER TON OF 2,000 POUNDS
ON WASTE MATERIALS, CARLOADS, UTAH INTRASTATE

Column:	1	2	3	4	5	6	7	8	9	10
Line	Commodity	From	TO U.P.	Cars	Tons	Rate Thru X-168	Revenue Thru X-168	Revenue Sought	Difference in Revenue Col. 8 vs. Col. 7	Tariff Authority
1	Scrap Battery Lead	Salt Lake City, Utah	Midvale, Utah	1	27	$1.70	$45.00	$51.00	$6.00	(4)
2	Scrap Battery Lead	Brigham, Utah	Midvale, Utah	1	39	$3.20	$124.00	$142.00	$18.00	(5)
3	Scrap Battery Lead	Brigham,	Salt Lake City, Utah	1	38	$3.20	$121.00	$139.00	$18.00	(5)

(4) LUFB 1-P and 1-Q, Agent L. F. Mack's ICC Nos. 1 and 4.

(5) U.P. 4100, ICC 5194.

UTAH INTRASTATE FREIGHT REVENUE, EXPENSES, OPERATING RATIO,
AND TON-MILES PER MILE OF TRACK AS COMPARED TO THE SYSTEM TOTALS
OF SAME STATISTICS FOR INTERSTATE RAILROADS OPERATING IN UTAH FOR 1950, 1951, 1952, 1953

	INTRASTATE STATISTICS				SYSTEM STATISTICS			
	1950	1951	1952	1953	1950	1951	1952	1953
DENVER & RIO GRANDE WESTERN RAILROAD CO.								
REVENUE	28,634,534	30,602,753	32,410,490	34,640,418	60,794,561	72,183,709	76,432,064	79,185,601
EXPENSE	15,714,364	18,129,033	19,265,407	19,627,960	38,285,898	44,316,931	46,201,409	45,706,779
O.R.	61.30	59.24	59.42	56.66	62.98	60.01	60.45	57.72
DENSITY	3,432,533	4,073,952	4,329,409	4,303,760	2,939,209	2,411,595	2,528,954	2,526,252
SOUTHERN PACIFIC RAILROAD CO.								
REVENUE	16,237,183	18,227,357	20,688,373	21,118,192	400,695,863	435,925,066	473,812,744	476,038,968
EXPENSE	7,170,650	7,973,011	9,265,666	9,865,780	251,917,540	290,985,796	306,816,732	314,196,801
O.R.	44.12	43.74	44.79	46.71	62.87	66.75	64.75	66.00
DENSITY	11,978,892	10,878,820	13,277,775	12,703,072	3,734,361	3,479,388	3,876,903	3,798,280
UNION PACIFIC RAILROAD CO.								
REVENUE	41,428,783	47,695,097	46,361,334	51,243,557	395,806,953	435,152,713	445,584,266	460,790,170
EXPENSE	23,299,766	26,907,234	27,160,281	28,302,009	234,404,079	269,611,596	280,002,902	286,457,584
O.R.	56.24	56.42	58.58	55.23	59.22	61.96	62.84	62.17
DENSITY	4,082,174	4,736,074	4,567,406	5,148,461	3,112,735	3,526,004	3,424,796	3,474,790
WESTERN PACIFIC RAILROAD CO.								
REVENUE	5,990,021	6,720,999	7,082,078	7,766,788	45,993,144	51,629,854	52,306,873	55,416,242
EXPENSE	3,046,815	3,531,185	4,261,334	4,016,705	26,300,286	30,668,678	33,070,048	34,015,726
O.R.	50.86	52.54	60.34	51.72	57.18	59.40	63.22	61.38
DENSITY	3,267,370	3,548,151	3,533,452	3,745,728	3,052,095	3,356,518	3,272,768	3,408,515

O.R.—OPERATING RATIO
DENSITY—TON-MILES PER MILE OF TRACK
SOURCE: ANNUAL REPORTS OF RAILROADS ON FILE WITH PUBLIC SERVICE COMMISSION OF UTAH

COMPARISON OF STATISTICS FOR THE DENVER AND RIO GRANDE WESTERN RAILROAD OF RAIL-LINE OPERATIONS OF UTAH COMPARED TO COLORADO AND SYSTEM.

	UTAH		COLORADO		SYSTEM	
	1962	1963	1962	963	1962	1963
TRAIN-MILES	1,642,139	1,506,858	2,456,029	2,266,312	4,130,509	3,822,868
LOCOMOTIVE-MILES	2,940,262	2,668,489	4,426,625	4,066,451	7,430,134	6,826,635
LOADED FREIGHT CAR-MILES	78,911,894	77,138,429	106,845,755	102,790,246	186,433,771	180,971,469
EMPTY FREIGHT CAR-MILES	29,974,396	30,050,617	41,275,805	42,456,547	71,966,831	73,814,598
TOTAL FREIGHT - CAR-MILES	110,544,578	108,741,916	150,588,175	147,590,448	262,548,690	258,733,603
TON-MILES OF REVENUE FREIGHT	2,688,563,000	2,672,635,000	3,200,572,000	3,159,723,000	5,900,049,000	5,848,273,000
TONS PER FREIGHT CAR(TOTAL)	24.32	24.58	21.25	21.41	22.47	22.60
TONS PER FREIGHT CAR(LOADED)	34.07	34.65	29.96	30.74	31.65	32.32
TONS PER TRAIN	1,637	1,774	1,303	1,394	1,428	1,530
TONS PER LOCOMOTIVE	914	1,002	723	777	794	857
TONS PER MILE OF TRACK	4,329,409	4,303,760	1,268,055	1,979,776	2,528,954	2,526,262

SOURCE : ANNUAL REPORTS OF THE DENVER AND RIO GRANDE WESTERN RAILROAD CO. FILED WITH THE PUBLIC SERVICE COMMISSION OF UTAH AND COLORADO.

COMPARISON OF UTAH INTRASTATE REVENUE
PER TON-MILE AS COMPARED TO REVENUE PER TON-MILE
OF ALL INTERSTATE SHIPMENTS ORIGINATING IN UTAH IN 1952

	UTAH TO UTAH INTRASTATE SHIPMENTS AGRICULTURE	UTAH TO ALL OTHER STATES INTERSTATE SHIPMENTS PRODUCTS
REVENUE	$166,500	$3,615,900
TON-MILES	6,470,000	317,070,000
REVENUE PER TON-MILE	$.0257	$.0114
PRODUCTS OF ANIMALS		
REVENUE	$181,200	$2,739,100
TON-MILES	4,360,000	101,070,000
REVENUE PER TON-MILE	$.0415	$.0271
PRODUCTS OF MINES		
REVENUE	$9,130,300	$20,566,700
TON-MILES	864,030,000	3,981,390,000
REVENUE PER TON-MILE	$.0106	$.0074
MANUFACTURED & MISC. PRODUCTS		
REVENUE	$1,638,500	$35,209,000
TON-MILES	45,170,000	2,328,570,000
REVENUE PER TON-MILE	$.0363	$.0152
TOTAL OF ALL PRODUCTS		
REVENUE	$11,116,500	$68,129,600
TON-MILES	920,030,000	6,418,350,000
REVENUE PER TON-MILE	$.0121	$.0106

SOURCE: Carload waybill statistics, 1% sample, 1952.
Statement No. 5326, 5327, 5328, 5329, 5330, 5331.

BEFORE THE

INTERSTATE COMMERCE COMMISSION

CLASS RATES, MOUNTAIN-PACIFIC TERRITORY) Docket No. 30416

CLASS RATES, TRANSCONTINENTAL RAIL, 1950) Docket No. 30680

Statement containing "an explanation of the bases employed in assigning each operating expense account and statistical item to each individual State or operating division within Mountain-Pacific territory."

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[fol. 678]

BEFORE THE

INTERSTATE COMMERCE COMMISSION

CLASS RATES, MOUNTAIN-PACIFIC TERRITORY) Docket No. 30416

CLASS RATES, TRANSCONTINENTAL RAIL, 1950) Docket No. 30660

Statement containing "an explanation of the bases employed in assigning each operating expense account and statistical item to each individual State or operating division within Mountain-Pacific territory."

Pursuant to letter request from Commissioner Alldredge, copy attached as page 3 of this statement, the seven railroads directed to respond to the Commission's orders of December 1, 1952, as amended, have prepared "an explanation of the bases employed in assigning each operating expense account and statistical item to each individual State or operating division within Mountain-Pacific territory."

The seven railroads responding to the Commission's cost orders are:

Atchison, Topeka and Santa Fe Railway Company
Chicago, Burlington & Quincy Railroad Company
Chicago, Milwaukee, St. Paul & Pacific Railroad Co.
Chicago and North Western Railway Company
Great Northern Railway
Northern Pacific Railway Company
Union Pacific Railroad Company

[fol. 679]

The explanations prepared by the railroads have been consolidated into sections, as follows:

			Beginning at Page
Section	1	California	4
	2	Colorado	17
	3	Idaho	27
	4	Montana	47
	5	Nevada	68
	6	Oregon	77
	7	Utah	94
	8	Washington	103
	9	Wyoming	122
	10	The Atchison, Topeka and Santa Fe Railway Company by operating divisions in Territory I (Mountain-Pacific)	136

The explanations show the bases employed in assigning the freight expenses as separated between freight and passenger services in accordance with the formulae prescribed by the Interstate Commerce Commission, effective January 1, 1936. The freight proportion of total expenses, as determined under these rules, includes an apportionment of expenses common to both freight and passenger service on the basis of various service units. Accordingly, the attached explanation of the bases employed in assigning expenses to individual states or operating divisions does not reflect the extent to which apportionment or prorating factors have been employed. (For example, in instances where freight expense is reported by a responding road as assigned, in whole or in part, on the basis of direct charges, this description would indicate that the freight portion of the total expense may itself be derived on the basis of such arbitrary allocation factors as, for example, gross ton miles, locomotive miles, or train miles.)

Some roads apportion some expenses (like wages) directly to passenger service as a whole or freight service as a whole and then split to states on the basis of the arbitrary allocation factors. In such cases, the total freight expense may be actual and correct whereas the state figures for freight expense would be only approximations. On the other hand, some roads show "direct freight expense" in their annual reports for the system but actually produce the figures by using allocation factors at an early stage in the accounting process (e.g., locomotive repairs for engines used in more than one service are split on the basis of the miles of such engines and reported as "direct freight"); these in turn must be split by arbitrary factors down to the state level. Thus, the extent of the prorating done cannot be measured by the proportion of "common" expenses shown in the annual report, the actual prorates being understated substantially by this reporting system.

INTERSTATE COMMERCE COMMISSION
Washington 25

January 28, 1954

Mr. H. C. Barron
310 Union Station
Chicago, Illinois

Mr. Douglas T. Smith
11 South LaSalle Street
Chicago, Illinois

Dear Sirs:

Docket No. 30416, Class Rates, Mountain-Pacific Territory
Docket No. 30660, Class Rates, Transcontinental Rail, 1950

In response to the Commission's order of December 1, 1952 and as amended, seven railroads provided a separation of certain expenses and statistics between Mountain-Pacific (Territory I) and Other (Territory II), the data being shown on Appendix sheets 1-4 of Rail Form A, 8-51.

The Commission's order and amendments thereto stated that the expenses and statistics could be obtained by summarizing data supplied in the carriers' annual reports for the States lying within Mountain-Pacific territory or by aggregating the carriers' data for operating or accounting divisions lying within such territory.

The methods of assigning the expenses and statistics to the individual States and to the accounting or operating divisions have not been sufficiently explained in the "Notes" which each carrier showed on the back of Appendix, Sheet 1. In order that proper consideration may be given to this evidence it is essential that the record contain an explanation of the bases employed in assigning each operating expense account and statistical item to each individual State or operating division within Mountain-Pacific territory. The explanations should show for each operating expense account and statistical item the basis actually used in making the assignments to each State or operating division, i.e., direct charges, track-miles, car-miles, gross-ton-miles, train-miles, locomotive-miles, etc.

Will you please advise promptly if such explanation will be prepared by the seven railroads and introduced in the record in exhibit form at the next hearing, now scheduled to begin on April 19, 1954.

Cordially,

/s/. J. HADEN ALLDREDGE
Commissioner
Chairman, Division 2

Bases Employed in Preparing Reports to State of California

Line Number of Sheet 1 of Responses to Commission's Cost Orders	Great Northern Railway	Union Pacific Railroad Company
1	Direct	*
2	do	*
3	do	*
4	do	*
5	do	*
6	do	*
7	do	*
8	do	*
9	do	*
10	do	*
11	do	*
12	do	*
13	do	*

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

Bases Employed in Preparing
Reports to State of California

Line Number of Sheet 1 of Responses to Commission's Cost Orders	Great Northern Railway	Union Pacific Railroad Company
14	Direct	*
15	do	*
16	do	*
17	do	*
18	do	*
19	do	*
20	do	*
21	Locomotive-miles	
22	Locomotive-miles	
23	do	
24	do	
25	do	
26	do	

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

Bases Employed in Preparing Reports to State of California

Line Number of Sheet 1 of Responses to Commission's Cost Orders		Great Northern Railway	Union Pacific Railroad Company
27		No Amount	Average on basis of train-miles
28		Locomotive-miles	
29		do	
30		do	
31		do	
32		do	
33		do	
34		do	
35		do	
36		do	
37		No Amount	Average on basis of train-miles

Bases Employed in Preparing
Reports to State of California

Line Number of Sheet 2 of Responses to Commission's Cost Orders	Great Northern Railway	Union Pacific Railroad Company
All lines concerned Acct. 256		
1	Partly direct, partly track-miles	Average on basis of train-miles
2	Direct	do
3	do	do
4	Partly direct, partly track-miles	do
4a	(2)	do
4b	(3)	do
5	Partly direct, partly track-miles	Average on basis of train-miles
6	do	do
7	do	do
8	(4)	do

(2) Prorated to states on 1945 percentages of total system charges, sub-accounts estimated.
(3) Total of account direct, sub-accounts estimated.
(4) No apportionment over Montana-North Dakota state line.

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Bases Employed in Preparing
Reports to State of California

Line Number of Sheet 2 of Responses to Commission's Cost Orders	Great Northern Railway	Union Pacific Railroad Company
9	Partly direct, partly track-miles	Average on basis of train-miles
10	No Amount	do
11	do	do
12	Direct	do
13	No Amount	do
14	Partly direct, partly wire-miles	do
15	Partly direct, partly track-miles	do
16	do	do
17	Direct	do
18	(4)	do
19	No Amount	do
20	(3)	do

(3) Total of account direct, sub-accounts estimated.
(4) No apportionment over Montana-North Dakota state line.

Bases Employed in Preparing Reports to State of California

Line Number of Sheet 2 of Responses to Commission's Cost Orders	Great Northern Railway	Union Pacific Railroad Company
21	No Amount	Average on basis of train-miles
22	Partly direct, partly track-miles	do
23	Direct	do
24	do	do
25	Partly direct, partly equated track-miles	do
26	Partly direct, partly track-miles	do
27	No Amount	do
28	Partly direct, partly track-miles	do
29	do	do
30	do	do
31	do	do
32	do	do
33	do	do

Line Number of Sheet 2 of Responses to Commission's Cost Orders	Great Northern Railway	Union Pacific Railway Company
34	(4)	Average on basis of train-miles
35	No Amount	do

Line Number of Sheet 3 of Responses to Commission's Cost Orders		
1	Partly direct, partly train-miles	do
2	do	do
3	No Amount	do
4	Partly direct, partly train-miles	do
5	Partly direct, partly freight train-miles	do
6	No Amount	do
7	Partly direct, partly train-miles	do
8	Direct	do

(4) No apportionment over Montana-North Dakota state line.

Bases Employed in Preparing Reports to State of California

Line Number of Sheet 3 of Responses to Commission's Cost Orders	Great Northern Railway	Union Pacific Railway Company
9	Direct	Average on basis of train-miles
10	do	do
11	do	do
12	do	do
13	Locomotive-miles	do
14	No Amount	do
15	do	do
16	Direct	do
17	Locomotive-miles	do
18	do	do
19	do	do
20	Direct	do
21	do	do
22	do	do

Bases Employed in Preparing Reports to State of California

Line Number of Sheet 3 of Responses to Commission's Cost Orders	Great Northern Railway	Union Pacific Railway Company
23	Partly direct, partly locomotive-miles	Average on basis of train-miles
24	do	do
25	Locomotive-miles	do
26	Direct	do
27	do	do
28	do	do
29	Locomotive-miles	do
30	do	do
31	do	do
32	Partly direct, partly train-miles	do
33	Train-miles	do
34	Partly direct, partly train-miles	do
35	Direct	do
36	do	do

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Bases Employed in Preparing
Reports to State of California

Line Number of Sheet 3 of Responses to Commission's Coat Orders	Great Northern Railway	Union Pacific Railway Company
37	Partly direct, partly wire-miles	Average on basis of train-miles
38	No Amount	do
39	do	do
40	Partly direct, partly train-miles	do
41	do	do
42	Direct	do
43	do	do
44	Partly direct, partly train-miles	do
45	do	do
46	Direct	do
47	do	do
48	Mileage prorate or actual locality, if known, on all claims over $1000 and wreck claims over $200. Balance prorated on basis of test period percentages.	do

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Bases Employed in Preparing Reports to State of California

Line Number of Sheet 3 of Responses to Commission's Cost Orders	Great Northern Railway	Union Pacific Railway Company
49	Partly direct, partly train-miles	Average on basis of train-miles
50	No Amount	do

Line Number of Sheet 4 of Responses to Commission's Cost Orders		
1	Direct	*
2	do	*
3	do	*
4	do	Average basis of train-miles
5	do	do
6	Partly direct, partly track-miles	do
7	do	do

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

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Bases Employed in Preparing
Reports to State of California

Line Number of Sheet 4 of Responses to Commission's Cost Orders	Great Northern Railway	Union Pacific Railway Company
8	(2)	Average basis of train-miles
9	Partly direct, partly track-miles	do
10	(2)	do
11	Locomotive-miles	do
12	(2)	do
13	Locomotive-miles	do
14	Direct	do
15	Locomotive-miles	do
16	Direct	do
17	do	*
18	do	*
19	do	*
20	do	*

(2) Prorated to states on basis percentages of total system charges. Sub-accounts estimated.

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 1?4 of this statement.

Bases Employed in Preparing
Reports to State of California

Line Number of Sheet 4 of Responses to Commission's Cost Orders	Great Northern Railway	Union Pacific Railway Company
21	Direct	*
22	do	*
23	do	*
24	do	*
25	do	*
26	do	Actual
27	do	*
28	do	*
29	do	*
30	Partly direct, partly train-miles	

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

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(Page 569 is over guard-title)

Line Number of Sheet 1 of Responses to Commission's Cost Orders	Union Pacific Railroad Company
14	*
15	*
16	*
17	*
18	*
19	*
20	*
27	Average on basis of train-miles
37	do

Line Number of Sheet 2 of Responses to Commission's Cost Orders	
1	Average on basis of train-miles
2	do
3	do
4	do

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

Line Number of Sheet 2 of Responses to Commission's Cost Orders	Union Pacific Railroad Company
19	Average on basis of train-miles
20	do
21	do
22	do
23	do
24	do
25	do
26	do
27	do
28	do
29	do
30	do
31	do
32	do
33	do
34	do
35	do

Line Number of Sheet 3 of Response to Commission's Cost Orders	Basis Employed in Preparing Reports to State of Colorado Union Pacific Railroad Company
18	Average on basis of train-miles
19	do
20	do
21	do
22	do
23	do
24	do
25	do
26	do
27	do
28	do
29	do
30	do
31	do
32	do
33	do

Line Number of Sheet 3 of Response to Commission's Cost Orders	Union Pacific Railroad Company
50	Average on basis of train-miles

Line Number of Sheet 4 of Responses to Commission's Cost Orders	
1	*
2	*
3	*
4	Average on basis of train-miles
5	do
6	do
7	do
8	do
9	do
10	do
11	do
12	do

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

Basis Employed in Preparing Reports to State of Colorado

Line Number of Sheet 4 of Responses to Commission's Cost Orders	Union Pacific Railroad Company
27	*
28	*
29	*
30	*

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

Line Number of Sheet 2 of Response to Commission's Cost Orders	Union Pacific Railroad Company
4a	Average on basis of train-miles
4b	do
5	do
6	do
7	do
8	do
9	do
10	do
11	do
12	do
13	do
14	do
15	do
16	do
17	do
18	do

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[fol. 698]

Line Number of Sheet 3 of Response to Commission's Cost Orders	Basis Employed in Preparing Reports to State of Colorado Union Pacific Railroad Company
1	Average on basis of train-miles
2	do
3-4	do
5	do
6	do
7	do
8	do
9	do
10	do
11	do
12	do
13	do
14	do
15	do
16	do
17	do

Line Number of Sheet 3 of Response to Commission's Cost Orders	Union Pacific Railroad Company
34	Average on basis of train-miles
35	do
36	do
37	do
38	do
39	do
40	do
41	do
42	do
43	do
44	do
45	do
46	do
47	do
48	do
49	do

Line Number of Sheet 4 of Response to Commission's Cost Orders	Basis Employed in Preparing Reports to State of Colorado	Union Pacific Railroad Company
13		Average on basis of train-miles
14		do
15		do
16		do
17		*
18		*
19		*
20		*
21		*
22		*
23		*
24		*
25		*
26		Actual

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

[fol. 702]

Bases Employed in Preparing Reports to State of Idaho

Line Number of Sheet 1 of Responses to Commission's Cost Orders	Chicago, Milwaukee St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
1	Direct	Direct	Actual - from dispatchers' train sheets	*
2	do	do	do	*
3	do	do	Actual - according to helper districts	*
4	Estimated on basis of locomotive miles	do	do	*
5	Estimated on basis of 6 miles per hour	do	Calculated on basis of experience	*
6	Estimated on basis of train switching locomotive miles	do	do	*
7	Estimated on basis of 6 miles per hour	do	Actual	*
8	do	do	do	*
9	Direct	do	Actual - from conductors' wheel reports	*

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

[fol. 704]

Bases Employed in Preparing Reports to State of Idaho

Line Number of Sheet 1 of Responses to Commission's Cost Orders	Chicago, Milwaukee St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
10	Direct except that gross-ton-miles for cabooses was estimated by multiplying caboose car-miles by 20	Direct	Actual - from conductors' wheel reports	*
11	Direct	do	do	*
12	do	do	do	*
13	do	do	do	*
14	do	do	do	*
15	do	do	do	*
16	do	do	do	*
17	Direct except Railroad Owned cars rented on a mileage basis estimated on basis of Private-Line car-miles	do	Unavailable	*
18	Total	do	do	*

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

Bases Employed in Preparing Reports to State of Idaho

Line Number of Sheet 1 of Responses to Commission's Cost Orders	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
29	Blank	Locomotive-miles		
30	Blank	do		
31	Prorated on basis of locomotive miles	do		
32	Blank	do		
33	Blank	do		
34	Prorated on basis of locomotive miles	Locomotive-miles		
35	Blank	do		
36	Blank	do		
37	Total	No amount		Average on basis of train-miles

Line Number of Sheet 1 of Responses to Commission's Cost Orders	Union Pacific (a) Railroad Company
1	*
2	*
3	*
4	*
5	*
6	*
7	*
8	*
9	*
10	*
11	*
12	*
13	*

(a) The response to the Commission's cost orders include in Territory I only the Colorado portion of the main line from Cheyenne to Denver, including Denver, and the branch lines located west of the main line. The separation of expenses within Colorado was accomplished by use of the same bases of separation as were employed in preparing the report to the state of Colorado.

* Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

Bases Employed in Preparing Reports to State of Idaho

Line Number of Sheet 2 of Responses to Commission's Cost Orders	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
5	Prorated on basis of track miles	Partly direct, partly track-miles	Partly direct and balance on basis of previous year's charges to this account as to maintenance, depreciation on basis of property valuation	Average on basis of train-miles
6	do	do	Direct as to maintenance, depreciation on basis of property valuation	do
7	do	do	do	do
8	do	No apportionment over Montana-North Dakota state line	do	do
9	do	Partly direct, partly track-miles	do	do
10	Blank	No amount	Not applicable	do
11	Direct	do	do	do

Bases Employed in Preparing Reports to State of Idaho

Line Number of Sheet 2 of Responses to Commission's Cost Orders	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
17	Prorated on basis of track miles	Direct	Direct as to maintenance, depreciation on basis of property valuation	Average on basis of train-miles
18	do	No apportionment over Montana-North Dakota state line	do	do
19	Blank	No amount	Not applicable	do
20	Direct	Total of account direct, sub-accounts estimated	Direct	do
21	Blank	No amount	Not applicable	do
22	Prorated on basis of track miles	Partly direct, partly track miles	Partly direct and balance on basis of track-miles maintained as to maintenance, depreciation on basis of property valuation	do

Bases Employed in Preparing Reports to State of Idaho

Line Number of Sheet 1 of Responses to Commission's Cost Orders	Chicago, Milwaukee St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
19	Direct	Direct	Actual - from dispatchers' train sheets	*
20	do	do	do	*
21	Prorated on basis of locomotive miles	Locomotive-miles		
22	Blank	do		
23	Prorated on basis of locomotive miles	do		
24	Blank	do		
25	Prorated on basis of locomotive miles	do		
26	Blank	do		
27	Total	No amount		Average on basis of train-miles
28	Prorated on basis of locomotive miles	Locomotive-miles		

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

[fol. 706]

Bases Employed in Preparing Reports to State of Idaho

Line Number of Sheet 2 of Responses to Commission's Cost Orders	Chicago, Milwaukee St. Paul and Pacific Railroad Company (1)	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
1	Prorated on basis of track miles	Partly direct, partly track-miles	Partly direct and balance on basis of track-miles maintained	Average on basis of train-miles
2	do	Direct	Direct	do
3	do	do	do	do
4	do	Partly direct, partly track-miles	Direct and balance on basis of track-miles maintained	do
4a	See Account 266 above	Prorated to states on 1945 percentages of total system charges, sub-accounts estimated	Apportioned on basis of property valuation	do
4b	Direct	Total of account direct, sub-accounts estimated	Direct as to maintenance depreciation on basis of property valuation	do

(1) All lines concerned: Acct. 266, each sub-account prorated on basis of property in depreciable road accounts; Acct. 267 Direct. The bases shown for Account 266 also cover their sub-accounts which are included with the operating expense accounts, and the bases shown for each line covers the operating expense accounts only.

[fol. 710]

Bases Employed in Preparing Reports to State of Idaho

Line Number of Sheet 2 of Responses to Commission's Cost Orders	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
12	Direct	Direct	Direct as to maintenance, depreciation on basis of property valuation	Average on basis of train-miles
13	Blank	No amount	do	do
14	Prorated to divisions on basis of wire miles and to states on basis of track miles	Partly direct, partly wire-miles	Partly direct and balance on basis of wire mileage as to maintenance, depreciation on basis of property valuation	do
15	Prorated on basis of track miles	Partly direct, partly track-miles	Partly direct and balance on basis of track-miles maintained as to maintenance, depreciation on basis of property valuation	do
16	Prorated on basis of track-miles	do	Direct as to maintenance, depreciation on basis of property valuation	do

[fol. 712]

Bases Employed in Preparing Reports to State of Idaho

Line Number of Sheet 2 of Responses to Commission's Cost Orders	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
23	Prorated on basis of track miles	Direct	Direct	Average on basis of train-miles
24	Blank	do	do	do
25	Prorated on basis of track miles	Partly direct, partly equated track-miles	Partly direct and balance on basis of track-miles maintained	do
26	do	Partly direct, partly track-miles	Direct	do
27	do	No amount	Direct as to maintenance, depreciation on basis of property valuation	Average on basis of train-miles
28	do	Partly direct, partly track-miles	Partly direct and balance on basis of track-miles maintained	do

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Bases Employed in Preparing Reports to State of Idaho

Line Number of Sheet 2 of Responses to Commission's Cost Orders	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
29	Prorated on basis of track miles	Partly direct, partly track-miles	Partly direct and balance on basis of track-miles maintained	Average on basis of train-miles
30	do	do	do	do
31	do	do	do	do
32	do	do	Direct	do
33	do	do	do	do
34	do	No apportionment over Montana-North Dakota state line	do	do
35	Total	No amount		do

Bases Employed in Preparing Reports to State of Idaho

Line Number of Sheet 3 of Responses to Commission's Cost Orders	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
9	Prorated on basis of yard switching locomotive miles	Direct	Direct	Average on basis of train-miles
10	do	do	do	do
11	do	do	do	do
12	do	do	do	do
13	do	Locomotive-miles	do	do
14	Blank	No amount	do	do
15	Direct	do	do	do
16	Prorated on basis of yard switching locomotive miles	Direct	do	do
17	do	Locomotive-miles	do	do
18	do	do	do	do
19	do	do	do	do
20	do	Direct	do	do
21	do	do	do	do

Bases Employed in Preparing Reports to State of Idaho

Line Number of Sheet 3 of Responses to Commission's Cost Orders	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
29	Prorated on basis of road steam locomotive miles	Locomotive-miles	Apportioned on basis of locomotive-ton-miles steam and diesel separately	Average on basis of train-miles
30	do	do	do	do
31	do	do	Apportioned on basis of locomotive-miles-steam and diesel separately	do
32	Prorated on basis of train-miles	Partly direct, partly train-miles	Direct as to Divisions which are apportioned to states on basis of miles run	do
33	Prorated on basis of car miles	Train-miles	Apportioned on basis of total car-miles	do
34	Prorated on basis of train miles	Partly direct, partly train-miles	Direct	do
35	do	Direct	do	do
36	do	do	do	do
37	do	Partly direct, partly wire-miles	Apportioned on basis of train-miles	do

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Bases Employed in Preparing Reports to State of Idaho

Line Number of Sheet 3 of Responses to Commission's Cost Orders	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
49	Prorated on basis of train miles	Partly direct, partly train-miles	Partly direct and balance on basis of train-miles	Average on basis of train-miles
50	Total	No amount		do

Line Number of Sheet 4 of Responses to Commission's Cost Orders				
1	Direct	Direct	Actual-principal from dispatchers' train sheets, helper and light according to helper districts, train switching blank	*
2	do	do	Actual	*
3	do	do	Actual-from conductors' wheel reports	*
4	Prorated on basis of track miles	do	Direct	Average on basis of train-miles

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

Bases Employed in Preparing Reports to State of Idaho

Line Number of Sheet 4 of Responses to Commission's Cost Orders	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
10	Same as Line 8	Prorated to states on 1945 percentages of total system charges. Sub-accounts estimated	Apportioned on basis of property valuation	Average on basis of train-miles
11	Direct	Locomotive-miles	Direct	do
12	Same as Line 8	Prorated to states on 1945 percentages of total system charges. Sub-accounts estimated	do	do
13	Prorated on basis of yard switching locomotive miles	Locomotive-miles	do	do
14	do	Direct	do	do
15	Prorated on basis of road locomotive miles	Locomotive-miles	Apportioned on basis of locomotive-miles-steam and diesel separately	do
16	do	Direct	do	do
17	Direct	Direct	Actual	*

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

[fol. 714]

Bases Employed in Preparing Reports to State of Idaho

Line Number of Sheet 3 of Responses to Commission's Cost Orders	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
1	Prorated on basis of train miles	Partly direct, partly train-miles	Partly direct and balance on basis of train-miles	Average on basis of train-miles
2	do	do	Direct as to Divisions which are apportioned to States on train-mile basis	do
3	do	No amount	Direct	do
4	Blank	Partly direct, partly train-miles	do	do
5	Prorated on basis of loaded car miles	Partly direct, partly freight train-miles	Partly direct and balance on basis of track-miles maintained	do
6	Blank	No amount	Direct	do
7	Prorated on basis of train-miles	Partly direct, partly train-miles	Partly direct and balance on basis of train-miles	do
8	Prorated on basis of yard switching locomotive miles	Direct	Direct	do

[fol. 716]

Bases Employed in Preparing Reports to State of Idaho

Line Number of Sheet 3 of Responses to Commission's Cost Orders	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
22	Prorated on basis of yard switching locomotive miles	Direct	Direct	Average on basis of train-miles
23	Prorated on basis of road locomotive miles	Partly direct, partly locomotive-miles	Direct as to Divisions which are apportioned to states on basis of miles run	do
24	do	do	do	do
25	do	Locomotive-miles	Apportioned on basis of locomotive-miles - steam and diesel separately	do
26	Blank	Direct	Not applicable	do
27	Prorated on basis of road elec. locomotive miles	do	do	do
28	Prorated on basis of road steam locomotive miles	do	Apportioned on basis of locomotive-miles - steam and diesel separately	do

Bases Employed in Preparing Reports to State of Idaho

Line Number of Sheet 3 of Responses to Commission's Cost Orders	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
38	Blank	No amount	Not applicable	Average on basis of train-miles
39	do	do	do	do
40	Prorated on basis of train miles	Partly direct, partly train-miles	Apportioned on basis of train-miles	do
41	do	do	do	do
42	do	Direct	Direct	do
43	do	do	do	do
44	do	Partly direct, partly train-miles	Apportioned on basis of train-miles	do
45	do	do	Direct	do
46	do	Direct	do	do
47	do	do	do	do
48	do	Mileage prorate or actual locality, if known, on all claims over $1000 and wreck claim over $200. Balance prorated on basis of test period percentages.	Not applicable	do

[Fol. 720]

Bases Employed in Preparing Reports to State of Idaho

Line Number of Sheet 4 of Responses to Commission's Cost Orders	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
5	Prorated on basis of track miles	Direct	Direct	Average basis of train-miles
6	do	Partly direct, partly track-miles	Partly direct and balance on basis of track-miles maintained	do
7	do	do	Partly direct and balance on basis of previous year's charges to this account	do
8	Acct. 266 - each sub-account prorated on basis of property in depreciable road account (a)	Prorated to states on 1945 percentages of total system charges. Sub-accounts estimated	Apportioned on basis of property valuation	do
9	Prorated on basis of track miles	Partly direct, partly track-miles	Direct	do

(a) The bases shown for Account 266 also cover its sub-accounts which are included with the operating expense accounts, and the bases shown for each line covers the operating expense accounts only.

[fol. 722]

Bases Employed in Preparing Reports to State of Idaho

Line Number of Sheet 4 of Responses to Commission's Cost Orders	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
18	Direct	Direct	Actual	*
19	do	do	do	*
20	do	do	do	*
21	do	do	do	*
22	do	do	do	*
23	do	do	do	*
24	do	do	do	*
25	do	do	System figures actual-received apportioned on basis of originated traffic, delivered apportioned on basis of terminated traffic	*
26	do	do	Assigned according to road miles over which tonnage moves	Actual
27	do	do	Calculated on basis of experience	*
28	do	do	do	*

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

Bases Employed in Preparing Reports to State of Idaho

Line Number of Sheet 4 of Responses to Commission's Cost Orders	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
29	Direct	Direct	Not applicable	*
30	do	Partly direct, partly train-miles	Actual as to time between terminals, Division involved apportioned on basis of train-miles	*

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

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Bases Employed in Preparing Reports to State of Montana

Line Number of Sheet 1 of Responses to Commission's Cost Orders	Chicago, Burlington, & Quincy Railroad Company	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
6	Based on 6 miles per hour for actual hours	Estimated on basis of train switching locomotive miles	Direct	Calculated on basis of experience	*
7	do	Estimated on basis of 6 miles per hour	do	Actual	*
8	do	do	do	do	*
9	Based on average weight, by classes, of locomotive actually operated in this territory	Direct	do	Actual - from conductors' wheel reports	*
10	Not actual, tare on basis of average weight of all freight carrying cars	Direct except that gross-ton-miles for cabooses was estimated by multiplying caboose car-miles by 20	do	do	*
11	Based on average of each class of passenger train car plus 150 pounds per passenger	Direct	do	do	*

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

Bases Employed in Preparing Reports to State of Montana

Line Number of Sheet 2 of Responses to Commission's Cost Orders	Chicago, Burlington, & Quincy Railroad Company	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
15	Directly allocated as far as possible, balance on basis of track miles	Prorated on basis of track miles	Partly direct, partly track-miles	Partly direct and balance on basis of track-miles maintained as to maintenance, depreciation on basis of property valuation	Average on basis of train-miles
16	do	do	do	Direct as to maintenance, depreciation on basis of property valuation	do
17	do	do	Direct	do	do
18	do	do	No apportionment over Montana-North Dakota state line	do	do
19	do	Blank	No amount	Not applicable	do
20	do	Direct	Total of account direct, sub-accounts estimated	Direct	do
21	do	Blank	No amount	Not applicable	do

Line Number of Sheet 1 of Responses to Commission's Cost Orders	Chicago, Burlington & Quincy Railroad Company	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
22		Blank	Locomotive-miles		
23		Prorated on basis of locomotive miles	do		
24		Blank	do		
25		Prorated on basis of locomotive miles	do		
26		Blank	do		
27		Total	No amount		Average on basis of train-miles
28		Prorated on basis of locomotive miles	Locomotive-miles		
29		Blank	do		
30		Blank	do		
31		Prorated on basis of locomotive miles	do		
32		Blank	do		
33		Blank	do		

Bases Employed in Preparing Reports to State of Montana

Line Number of Sheet 2 of Responses to Commission's Cost Orders	Chicago, Burlington, & Quincy Railroad Company	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
4a		See Account 266 in footnote	Prorated to states on 1945 percentages of total system charges, sub-accounts estimated.	Apportioned on basis of property valuation	Average on basis of train-miles
4b		Direct	Total of account direct, sub-accounts estimated	Direct as to maintenance, depreciation on basis of property valuation	do
5	Directly allocated as far as possible, balance on basis of track miles	Prorated on basis of track miles	Partly direct, partly track-miles	Partly direct and balance on basis of previous year's charges to this account as to maintenance, depreciation on basis of property valuation	do
6	do	do	do	Direct as to maintenance, depreciation on basis of property valuation	do

(1) All lines concerned: Acct. 266, each sub-account prorated on basis of property in depreciable road accounts; Acct. 267, Direct. The bases shown for Account 266 and 267 also cover their sub-accounts which are included with the operating expense accounts, and the bases shown for each line covers the operating expense accounts only.

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Bases Employed in Preparing Reports to State of Montana

Line Number of Sheet 1 of Responses to Commission's Cost Orders	Chicago, Burlington, & Quincy Railroad Company	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
1	Actual	Direct	Direct	Actual - from dispatchers' train sheets	*
2	Actual, except trailing Diesel-electric road-switcher unit miles estimated on basis of 2 unit operation	Partially estimated on basis of locomotive miles	do	do	*
3	Actual	Direct	do	Actual - according to helper districts	*
4	Actual, except trailing Diesel-electric road-switcher unit miles estimated on basis of 2 unit operation	Estimated on basis of locomotive miles	do	do	*
5	Based on 6 miles per hour for actual hours	Estimated on basis of 6 miles per hour	do	Calculated on basis of experience	*

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

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Bases Employed in Preparing Reports to State of Montana

Line Number of Sheet 1 of Responses to Commission's Cost Orders	Chicago, Burlington, & Quincy Railroad Company	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
12	Actual	Direct	Direct	Actual-from conductors' wheel reports	*
13	do	do	do	do	*
14	do	do	do	do	*
15	do	do	do	do	*
16	Actual	do	do	do	*
17	do	Direct except Railroad Owned cars rented on a mileage basis estimated on basis of Private-Line car-miles	do	Unavailable	*
18	do	Total	do	do	*
19	do	Direct	do	Actual - from dispatchers' train sheets	*
20	do	do	do	do	*
21		Prorated on basis of locomotive miles	Locomotive-miles	do	*

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

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Bases Employed in Preparing Reports to State of Montana

Line Number of Sheet 1 of Responses to Commission's Cost Orders	Chicago, Burlington, & Quincy Railroad Company	Chicago, Milwaukee, St. Paul and Pacific Railroad Company (1)	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
34		Prorated on basis of locomotive miles	Locomotive-miles		
35.		Blank	do		
36		Blank	do		
37		Total	No amount		Average on basis of train-miles

Line Number of Sheet 2 of Responses to Commission's Cost Orders					
1	Directly allocated as far as possible, balance on basis of track miles	Prorated on basis of track miles	Partly direct, partly track-miles	Partly direct and balance on basis of track-miles maintained	Average on basis of train-miles
2	do	do	Direct	Direct	do
3	do	do	do	do	do
4	do	do	Partly direct, partly track-miles	Direct and balance on basis of track-miles maintained	do

(1) All lines concerned: Acct. 266, each sub-account prorated on basis of property in depreciable road accounts; Acct. 267, Direct. The bases shown for Account 266 and 267 also cover their sub-accounts which are included with the operating expense accounts, and the bases shown for each line covers the operating expense accounts only.

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Bases Employed in Preparing Reports to State of Montana

Line Number of Sheet 2 of Responses to Commission's Cost Orders	Chicago, Burlington, & Quincy Railroad Company	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
7	Directly allocated as far as possible, balance on basis of track miles	Prorated on basis of track miles	Partly direct, partly track-miles	Direct as to maintenance, depreciation on basis of property valuation	Average on basis of train-miles
8	do	do	No apportionment over Montana-North Dakota state line	do	do
9	do	do	Partly direct, partly track-miles	do	do
10	do	Blank	No amount	Not applicable	do
11	do	Direct	do	do	do
12	do	do	Direct	Direct as to maintenance, depreciation on basis of property valuation	do
13	do	Blank	No amount	do	do
14	do	Prorated to divisions on basis of wire miles and to states on basis of track miles	Partly direct, partly wire-miles	Partly direct and balance on basis of wire mileage as to maintenance, depreciation on basis of property valuation	do

(Page 606 is over guard-rule)

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Bases Employed in Preparing Reports to State of Montana

Line Number of Sheet 2 of Responses to Commission's Cost Orders	Chicago, Burlington, & Quincy Railroad Company	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
29	Directly allocated as far as possible, balance on basis of track miles	Prorated on basis of track miles	Partly direct, partly track-miles	Partly direct and balance on basis of track-miles maintained	Average on basis of train-miles
30	do	do	do	do	do
31	do	do	do	do	do
32	do	do	do	Direct	do
33	do	do	do	do	do
34	do	do	No apportionment over Montana-North Dakota state line	do	do
35		Total	No amount		do

Line Number of Sheet 3 of Responses to Commission's Cost Orders					
1	Directly allocated as far as possible, balance on basis of train miles	Prorated on basis of train miles	Partly direct, partly train-miles	Partly direct and balance on basis of train-miles	do

Bases Employed in Preparing Reports to State of Montana

Line Number of Sheet 3 of Responses to Commission's Cost Orders	Chicago, Burlington, & Quincy Railroad Company	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
9	Directly allocated as far as possible, balance on basis of yard switching locomotive miles	Prorated on basis of yard switching locomotive miles	Direct	Direct	Average on basis of train-miles
10	do	do	do	do	do
11	do	do	do	do	do
12	do	do	do	do	do
13	do	do	Locomotive-miles	do	do
14	do	Blank	No amount	do	do
15	do	Direct	do	do	do
16	do	Prorated on basis of yard switching locomotive miles	Direct	do	do
17	do	do	Locomotive-miles	do	do
18	do	do	do	do	do
19	do	do	do	do	do
20	do	do	Direct	do	do

Bases Employed in Preparing Reports to State of Montana

Line Number of Sheet 3 of Responses to Commission's Cost Orders	Chicago, Burlington, & Quincy Railroad Company	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
29	Directly allocated as far as possible, balance on basis of road locomotive miles	Prorated on basis of road steam locomotive miles	Locomotive-miles	Apportioned on basis of locomotive-ton-miles steam and diesel separately	Average on basis of train-miles
30	do	do	do	do	do
31	do	do	do	Apportioned on basis of locomotive-miles-steam and diesel separately	do
32	Directly allocated as far as possible, balance on basis of train miles	Prorated on basis of train miles	Partly direct, partly train-miles	Direct as to Divisions which are apportioned to states on basis of miles run	do
33	do	Prorated on basis of car miles	Train-miles	Apportioned on basis of total car-miles	do
34	do	Prorated on basis of train miles	Partly direct, partly train-miles	Direct	do
35	do	do	Direct	do	do
36	Directly allocated, state line bridges 1/2 to each state	do	do	do	do

Bases Employed in Preparing Reports to State of Montana

Line Number of Sheet 3 of Responses to Commission's Cost Orders	Chicago, Burlington, & Quincy Railroad Company	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
48	Directly allocated as far as possible, balance on basis of road miles, gross, ton miles or train miles as appropriate	Prorated on basis of train miles	Mileage prorate or actual locality, if known, on all claims over $1000 and wreck claims over $200. Balance prorated on basis of test period percentages.	Not applicable	Average on basis of train-miles
49	Directly allocated as far as possible, balance on basis of train-miles	do	Partly direct, partly train-miles	Partly direct and balance on basis of train-miles	do
50		Total	No amount		do

Line Number of Sheet 4 of Responses to Commission's Cost Orders					
1	Actual except train switching based on 6 miles per hour for actual hours	Direct	Direct	Actual-principal from dispatchers' train sheets, helper and light according to helper districts, train switching blank	*

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

Bases Employed in Preparing Reports to State of Montana

Line Number of Sheet 4 of Responses to Commission's Cost Orders	Chicago, Burlington, & Quincy Railroad Company	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
8	Directly allocated as far as possible, balance on basis of track miles	Acct. 266-each sub-account prorated on basis of property in depreciable road accounts (a)	Prorated to states on 1945 percentages of total system charges. Sub-accounts estimated	Apportioned on basis of property valuation	Average basis of train-miles
9	do	Prorated on basis of track miles	Partly direct, partly track-miles	Direct	do
10	do	Same as line 8	Prorated to states on 1945 percentages of total system charges. Sub-accounts estimated	Apportioned on basis of property valuation	do
11	do	Direct	Locomotive-miles	Direct	do
12	do	Same as line 8	Prorated to states on 1945 percentages of total system charges. Sub-accounts estimated	do	do

(a) The bases shown for Account 266 also cover its sub-accounts which are included with the operating expense accounts, and the bases shown for each line covers the operating expense accounts only.

[fol. 733]

Bases Employed in Preparing Reports to State of Montana

Line Number of Sheet 3 of Responses to Commission's Cost Orders	Chicago, Burlington, & Quincy Railroad Company	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
2	Directly allocated as far as possible, balance on basis of train miles	Prorated on basis of train miles	Partly direct, partly train-miles	Direct as to Divisions which are apportioned to States on train-mile basis	Average on basis of train-miles
3	do	do	No amount	Direct	do
4	do	Blank	Partly direct, partly train-miles	do	do
5	do	Prorated on basis of loaded car miles	Partly direct, partly freight train-miles	Partly direct and balance on basis of track-miles maintained	do
6	do	Blank	No amount	Direct	do
7	do	Prorated on basis of train-miles	Partly direct, partly train-miles	Partly direct and balance on basis of train-miles	do
8	Directly allocated as far as possible, balance on basis of yard switching locomotive miles	Prorated on basis of yard switching locomotive miles	Direct	Direct	do

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Bases Employed in Preparing Reports to State of Montana

Line Number of Sheet 3 of Responses to Commission's Cost Orders	Chicago, Burlington, & Quincy Railroad Company	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
21	Directly allocated	Prorated on basis of yard switching locomotive miles	Direct	Direct	Average on basis of train-miles
22	do	do	do	do	do
23	Directly allocated as far as possible, balance on basis of road locomotive miles	Prorated on basis of road locomotive miles	Partly direct, partly locomotive-miles	Direct as to Divisions which are apportioned to states on basis of miles run	do
24	do	do	do	do	do
25	do	do	Locomotive-miles	Apportioned on basis of locomotive-miles-steam and diesel separately	do
26	do	Blank	Direct	Not applicable	do
27	do	Prorated on basis of road elec. locomotive miles	do	do	do
28	do	Prorated on basis of road steam locomotive miles	do	Apportioned on basis of locomotive-miles-steam and diesel separately	do

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Bases Employed in Preparing Reports to State of Montana

Line Number of Sheet 3 of Responses to Commission's Cost Orders	Chicago, Burlington, & Quincy Railroad Company	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
37	Directly allocated as far as possible, balance on basis of train miles	Prorated on basis of train miles	Partly direct, partly wire-miles	Apportioned on basis of train-miles	Average on basis of train-miles
38	do	Blank	No amount	Not applicable	do
39	do	do	do	do	do
40	do	Prorated on basis of train miles	Partly direct, partly train-miles	Apportioned on basis of train-miles	do
41	do	do	do	do	do
42	do	do	Direct	Direct	do
43	do	do	do	do	do
44	do	do	Partly direct, partly train-miles	Apportioned on basis of train-miles	do
45	do	do	do	Direct	do
46	do	do	Direct	do	do
47	do	do	do	do	do

[fol. 739]

Bases Employed in Preparing Reports to State of Montana

Line Number of Sheet 4 of Responses to Commission's Cost Orders	Chicago, Burlington, & Quincy Railroad Company	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
2	Based on 6 miles per hour for actual hours	Direct	Direct	Actual	*
3	Actual	do	do	Actual-from conductors' wheel reports	*
4	Directly allocated as far as possible, balance on basis of track miles	Prorated on basis of track miles	do	Direct	Average on basis of train-miles
5	do	do	do	do	do
6	do	do	Partly direct, partly track-miles	Partly direct and balance on basis of track-miles maintained	do
7	do	do	do	Partly direct and balance on basis of previous year's charges to this account	do

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

Bases Employed in Preparing Reports to State of Montana

Line Number of Sheet 4 of Responses to Commission's Cost Orders	Chicago, Burlington, & Quincy Railroad Company	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
13	Directly allocated as far as possible, balance on basis of yard switching locomotive miles	Prorated on basis of yard switching locomotive miles and partially direct	Locomotive-miles	Direct	Average on basis of train-miles
14	do	do	Direct	do	do
15	Directly allocated as far as possible, balance on basis of road locomotive miles	Prorated on basis of road locomotive miles	Locomotive-miles	Apportioned on basis of locomotive-miles-steam and diesel separately	do
16	do	do	Direct	do	do
17	Actual	Direct	do	Actual	*
18	do	do	do	do	*
19	do	do	do	do	*
20	do	do	do	do	*
21	do	do	do	do	*
22	Actual four months-Feb., May, Aug., and Nov. 1951	do	do	do	*

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

Bases Employed in Preparing Reports to State of Montana

Line Number of Sheet 4 of Responses to Commission's Cost Orders	Chicago, Burlington, & Quincy Railroad Company	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
23	Actual four months-Feb., May, Aug., and Nov. 1951	Direct	Direct	Actual	*
24	Actual	do	do	do	*
25	do	do	do	System figures actual received apportioned on basis of originated traffic, delivered apportioned on basis of terminated traffic	*
26	do	do	do	Assigned according to road miles over which tonnage moves	Actual
27	Based on 6 miles per hour for actual hours	do	do	Calculated on basis of experience	*
28	do	do	do	do	*
29	do	do	do	Not applicable	*

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

Bases Employed in Preparing Reports to State of Nevada

Line Number of Sheet 1 of Response to Commission's Cost Orders	Union Pacific Railroad Company
1	*
2	*
3	*
4	*
5	*
6	*
7	*
8	*
9	*
10	*
11	*
12	*
13	*
14	*
15	*

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

Bases Employed in Preparing Reports to State of Montana

Line Number of Sheet 2 of Responses to Commission's Cost Orders	Chicago, Burlington, & Quincy Railroad Company	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
22	Directly allocated as far as possible, balance on basis of track miles	Prorated on basis of track miles	Partly direct, partly track-miles	Partly direct and balance on basis of track-miles maintained as to maintenance, depreciation on basis of property valuation	Average on basis of train-miles
23	do	do	Direct	Direct	do
24	do	Blank	do	do	do
25	do	Prorated on basis of track miles	Partly direct, partly equated track-miles	Partly direct and balance on basis of track-miles maintained	do
26	do	do	Partly direct, partly track-miles	Direct	do
27	do	do	No amount	Direct as to maintenance, depreciation on basis of property valuation	do
28	do	do	Partly direct, partly track-miles	Partly direct and balance on basis of track-miles maintained	do

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[fol. 746]

Line Number of Sheet 2 of Response to Commission's Cost Orders	Union Pacific Railroad Company
4b	Average on basis of train-miles
5	do
6	do
7	do
8	do
9	do
10	do
11	do
12	do
13	do
14	do
15	do
16	do
17	do
18	do
19	do

Bases Employed in Preparing
Reports to State of Nevada

Line Number of Sheet 3 of Response to Commission's Cost Orders	Union Pacific Railroad Company
1	Average on basis of train-miles
2	do
3-4	do
5	do
6	do
7	do
8	do
9	do
10	do
11	do
12	do
13	do
14	do
15	do
16	do
17	do

[fol. 743]

Bases Employed in Preparing
Reports to State of Montana

Line Number of Sheet 4 of Responses to Commission's Cost Orders	Chicago, Burlington, & Quincy Railroad Company	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
30	Actual	Direct	Partly direct, partly train-miles	Actual as to time between terminals, Division involved apportioned on basis of train-miles	*

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

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[fol. 745]

Bases Employed in Preparing Reports to State of Nevada

Line Number of Sheet 1 of Response to Commission's Cost Orders	Union Pacific Railroad Company
16	*
17	*
18	*
19	*
20	*
27	Average on basis of train-miles
37	do

Line Number of Sheet 2 of Response to Commission's Cost Orders	
1	Average on basis of train-miles
2	do
3	do
4	do
4a	do

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

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[fol. 747]

Bases Employed in Preparing Reports to State of Nevada

Line Number of Sheet 2 of Response to Commission's Cost Orders	Union Pacific Railroad Company
20	Average on basis of train-miles
21	do
22	do
23	do
24	do
25	do
26	do
27	do
28	do
29	do
30	do
31	do
32	do
33	do
34	do
35	do

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Line Number of Sheet 3 of Response to Commission's Cost Orders	Union Pacific Railroad Company
18	Average on basis of train-miles
19	do
20	do
21	do
22	do
23	do
24	do
25	do
26	do
27	do
28	do
29	do
30	do
31	do
32	do
33	do

[fol. 749]

Line Number of Sheet 3 of Response to Commission's Cost Orders	Union Pacific Railroad Company
34	Average on basis of train-miles
35	do
36	do
37	do
38	do
39	do
40	do
41	do
42	do
43	do
44	do
45	do
46	do
47	do
48	do
49	do
50	do

Bases Employed in Preparing Reports to State of Nevada

Line Number of Sheet 4 of Response to Commission's Cost Orders	Union Pacific Railroad Company
17	*
18	*
19	*
20	*
21	*
22	*
23	*
24	*
25	*
26	Actual
27	*
28	*
29	*
30	*

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

Bases Employed in Preparing Reports to State of Oregon

Line Number of Sheet 1 of Responses to Commission's Cost Orders	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
12	Direct	Actual - from conductors' wheel reports	*
13	do	do	*
14	do	do	*
15	do	do	*
16	do	do	*
17	do	Unavailable	*
18	do	do	*
19	do	Actual - from dispatchers' train sheets	*
20	do	do	*
21	Locomotive-miles		
22	do		
23	do		
24	do		

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

Bases Employed in Preparing Reports to State of Oregon

Line Number of Sheet 2 of Responses to Commission's Cost Orders	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
1	Partly direct, partly track-miles	Partly direct and balance on basis of track-miles maintained	Partly direct and partly average on basis of other MofW&S accounts
2	Direct	Direct	Partly direct and partly average on basis of track miles
3	Direct	do	do
4	Partly direct, partly track-miles	Direct and balance on basis of track-miles maintained	do
4a	Prorated to states on 1945 percentages of total system charges, sub-accounts estimated	Apportioned on basis of property valuation	Direct charges
4b	Total of account direct, sub-accounts estimated	Direct as to maintenance, depreciation on basis of property valuation	do

Bases Employed in Preparing Reports to State of Oregon

Line Number of Sheet 2 of Responses to Commission's Cost Orders	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
13	No amount	Direct as to maintenance, depreciation on basis of property valuation	Direct charges
14	Partly direct, partly wire-miles	Partly direct and balance on basis of wire mileage as to maintenance, depreciation on basis of property valuation	Partly direct and partly average on basis of track-miles
15	Partly direct, partly track-miles	Partly direct and balance on basis of track-miles maintained as to maintenance, depreciation on basis of property valuation	do
16	do	Direct as to maintenance, depreciation on basis of property valuation	do
17	Direct	do	do
18	No apportionment over Montana-North Dakota state line	do	Direct charges
19	No amount	Not applicable	do

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[fol. 758]

[fol. 751]

Bases Employed in Preparing Reports to State of Nevada

Line Number of Sheet 4 of Response to Commission's Cost Orders	Union Pacific Railroad Company
1	*
2	*
3	*
4	Average on basis of train-miles
5	do
6	do
7	do
8	do
9	do
10	do
11	do
12	do
13	do
14	do
15	do
16	do

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

[fol. 753]

Bases Employed in Preparing Reports to State of Oregon

Line Number of Sheet 1 of Responses to Commission's Cost Orders	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
1	Direct	Actual - from dispatchers' train sheets	*
2	do	do	*
3	do	Actual - according to helper districts	*
4	do	do	*
5	do	Calculated on basis of experience	*
6	do	do	*
7	do	Actual	*
8	do	do	*
9	do	Actual - from conductors' wheel reports	*
10	do	do	*
N	do	do	*

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

[fol. 755]

Line Number of Sheet 1 of Responses to Commission's Cost Orders	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
25	Locomotive-miles		
26	do		
27	No amount		Average on basis of train-miles
28	Locomotive-miles		
29	do		
30	do		
31	do		
32	do		
33	do		
34	do		
35	do		
36	do		
37	No amount		Average on basis of train-miles

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[fol. 757]

Bases Employed in Preparing Reports to State of Oregon

Line Number of Sheet 2 of Responses to Commission's Cost Orders	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
5	Partly direct, partly track-miles	Partly direct and balance on basis of previous year's charges to this account as to maintenance, depreciation on basis of property valuation	Partly direct and partly average on basis of track-miles
6	do	Direct as to maintenance, depreciation on basis of property valuation	do
7	do	do	do
8	No apportionment over Montana-North Dakota state line.	do	do
9	Partly direct, partly track-miles	do	do
10	No amount	Not applicable	Direct charges
11	do	do	do
12	Direct	Direct as to maintenance, depreciation on basis of property valuation	do

[fol. 759]

Bases Employed in Preparing Reports to State of Oregon

Line Number of Sheet 2 of Responses to Commission's Cost Orders	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
20	Total of account direct, sub-accounts estimated	Direct	Direct charges
21	No amount	Not applicable	do
22	Partly direct-partly track-miles	Partly direct and balance on basis of track-miles maintained as to maintenance, depreciation on basis of property valuation	Partly direct and partly average on basis of other MofW&S accounts
23	Direct	Direct	Direct charges
24	do	do	do
25	Partly direct, partly equated track-miles	Partly direct and balance on basis of track-miles maintained	Partly direct and partly average on basis of track-miles
26	Partly direct, partly track-miles	Direct	do
27	No amount	Direct as to maintenance, depreciation on basis of property valuation	do

Bases Employed in Preparing Reports to State of Oregon

Line Number of Sheet 2 of Responses to Commission's Cost Orders	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
28	Partly direct, partly track-miles	Partly direct and balance on basis of track-miles maintained	Direct charges
29	do	do	Partly direct and partly average on basis of track-miles
30	do	do	Average on basis of other MofW&S accounts
31	do	do	Partly direct and partly average on basis of track-miles
32	do	Direct	Direct charges
33	do	do	do
34	No apportionment over Montana-North Dakota state line	do	Partly direct and partly average on basis of track-miles
35	No amount		Partly direct and partly average on basis of methods described above for lines 1 to 34, inclusive

Bases Employed in Preparing Reports to State of Oregon

Line Number of Sheet 5 of Responses to Commission's Cost Orders	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
10	Direct	Direct	Direct Charges
11	do	do	do
12	do	do	do
13	Locomotive-miles	do	do
14	No amount	do	do
15	do	do	do
16	Direct	do	do
17	Locomotive-miles	do	do
18	do	do	do
19	do	do	do
20	Direct	do	do
21	do	do	do
22	do	do	do
23	Partly direct, partly locomotive-miles	Direct as to Divisions which are apportioned to states on basis of miles run	do

Bases Employed in Preparing Reports to State of Oregon

Line Number of Sheet 4 of Responses to Commission's Cost Orders	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
11	Locomotive-miles	Direct	Direct charges
12	Prorated to states on 1945 percentages of total system charges. Sub-accounts estimated	do	do
13	Locomotive-miles	do	do
14	Direct	do	do
15	Locomotive-miles	Apportioned on basis of locomotive-miles-steam and diesel separately	Average on basis of revenue engine miles
16	Direct	do	Direct charges
17	do	Actual	*
18	do	do	*
19	do	do	*
20	do	do	*
21	do	do	*

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

Bases Employed in Preparing Reports to State of Oregon

Line Number of Sheet 3 of Responses to Commission's Cost Orders	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
32	Partly direct, partly train-miles	Direct as to Divisions which are apportioned to states on basis of miles run	Direct charges
33	Train-miles	Apportioned on basis of total car-miles	Average on basis of car miles
34	Partly direct, partly train-miles	Direct	Partly direct and partly average on basis of direct charges
35	Direct	do	do
36	do	do	Direct charges
37	Partly direct, partly wire-miles	Apportioned on basis of train-miles	Partly direct and partly average on basis of direct charges
38	No amount	Not applicable	Direct charges
39	do	do	do
40	Partly direct, partly train-miles	Apportioned on basis of train-miles	Average on basis of other Transportation accounts

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[fol. 766]

Bases Employed in Preparing Reports to State of Oregon

Line Number of Sheet 3 of Responses to Commission's Cost Orders	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
49	Partly direct, partly train-miles	Partly direct and balance on basis of train-miles	Partly direct and partly average on basis of direct charges
50	No amount		Partly direct and partly average on basis of methods described above for lines 1 to 49, inclusive

Line Number of Sheet 4 of Responses to Commission's Cost Orders			
1	Direct	Actual-principal from dispatchers' train sheets, helper and light according to helper districts, train switching blank	*
2	do	Actual	*
3	do	Actual-from conductors' wheel reports	*

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

[fol. 761]

Bases Employed in Preparing Reports to State of Oregon

Line Number of Sheet 3 of Responses to Commission's Cost Orders	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
1	Partly direct, partly train-miles	Partly direct and balance on basis of train miles	Average on basis of train miles
2	do	Direct as to Divisions which are apportioned to States on train-mile basis	Partly direct and partly average on basis of direct charges
3	No amount	Direct	do
4	Partly direct, partly train-miles	do	do
5	Partly direct, partly freight train-miles	Partly direct and balance on basis of track-miles maintained	Average on basis of freight car miles
6	No amount	Direct	Direct charges
7	Partly direct, partly train-miles	Partly direct and balance on basis of train-miles	Partly direct and partly average on basis of direct charges
8	Direct	Direct	Direct charges
9	do	do	do

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Bases Employed in Preparing Reports to State of Oregon

Line Number of Sheet 3 of Responses to Commission's Cost Orders	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
24	Partly direct, partly locomotive-miles	Direct as to Divisions which are apportioned to states on basis of miles run	Direct charges
25	Locomotive-miles	Apportioned on basis of locomotive-miles-steam and diesel separately	Average on basis of locomotive unit miles
26	Direct	Not applicable	Direct charges
27	do	do	do
28	do	Apportioned on basis of locomotive-miles-steam and diesel separately	do
29	Locomotive-miles	Apportioned on basis of locomotive-ton-miles steam and diesel separately	Average on basis of locomotive miles
30	do	do	do
31	do	Apportioned on basis of locomotive-miles-steam and diesel separately	Partly direct and partly average on basis of locomotive miles

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[fol. 765]

Bases Employed in Preparing Reports to State of Oregon

Line Number of Sheet 3 of Responses to Commission's Cost Orders	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
41	Partly direct, partly train-miles	Apportioned on basis of train-miles	Direct charges
42	Direct	Direct	do
43	do	do	do
44	Partly direct, partly train-miles	Apportioned on basis of train-miles	Partly average on basis of revenues and partly average on basis of direct charges
45	do	Direct	Partly direct and partly average on basis of direct charges
46	Direct	do	do
47	do	do	Direct charges
48	Mileage prorate or actual locality, if known, on all claims over $1000 and wreck claims over $200. Balance prorated on basis of test period percentages	Not applicable	do

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Sheet 15 of 17

Bases Employed in Preparing
Reports to State of Oregon

Line Number of Sheet 4 of Responses to Commission's Cost Orders	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
4	Direct	Direct	Partly direct and partly average on basis of track-miles
5	do	do	do
6	Partly direct, partly track-miles	Partly direct and balance on basis of track-miles maintained	do
7	do	Partly direct and balance on basis of previous year's charges to this account	do
8	Prorated to states on 1945 percentages of total system charges. Sub-accounts estimated	Apportioned on basis of property valuation	Direct charges
9	Partly direct, partly track-miles	Direct	Partly direct and partly average on basis of track miles
10	Prorated to states on 1945 percentages of total system charges. Sub-accounts estimated	Apportioned on basis of property valuation	Direct charges

(Page 644 & over guard-hole)

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[fol. 770] (Page 645 b over guard-Rule)

Basis Employed in Preparing Reports to State of Utah

Line Number of Sheet 1 of Response to Commission's Cost Orders	Union Pacific Railroad Company
1	*
2	*
3	*
4	*
5	*
6	*
7	*
8	*
9	*
10	*
11	*
12	*
13	*
14	*
15	*

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

Basis Employed in Preparing Reports to State of Utah

Line Number of Sheet 1 of Response to Commission's Cost Orders	Union Pacific Railroad Company
5	Average on basis of train-miles
6	do
7	do
8	do
9	do
10	do
11	do
12	do
13	do
14	do
15	do
16	do
17	do
18	do
19	do
20	do
21	do

Line Number of Sheet 3 of Response to Commission's Cost Orders	Basis Employed in Preparing Reports to State of Utah
	Union Pacific Railroad Company
1	Average on basis of train-miles
2	do
3-4	do
5	do
6	do
7	do
8	do
9	do
10	do
11	do
12	do
13	do
14	do
15	do
16	do
17	do
18	do

Line Number of Sheet 3 of Response to Commission's Cost Orders	Basis Employed in Preparing Reports to State of Utah
	Union Pacific Railroad Company
36	Average on basis of train-miles
37	do
38	do
39	do
40	do
41	do
42	do
43	do
44	do
45	do
46	do
47	do
48	do
49	do
50	do

Basis Employed in Preparing Reports to State of Utah

Line Number of Sheet 4 of Responses to Commission's Cost Orders	Union Pacific Railroad Company
17	*
18	*
19	*
20	*
21	*
22	*
23	*
24	*
25	*
26	Actual
27	*
28	*
29	*
30	*

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

[fol. 771]

Basis Employed in Preparing Reports to State of Utah

Line Number of Sheet 1 of Response to Commission's Cost Orders	Union Pacific Railroad Company
16	*
17	*
18	*
19	*
20	*
27	Average on basis of train-miles
37	do

Line Number of Sheet 2 of Response to Commission's Cost Orders	
1	Average on basis of train-miles
2	do
3	do
4	do
4a	do
4b	do

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

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Line Number of Sheet 2 of Response to Commission's Cost Orders	Basis Employed in Preparing Reports to State of Utah Union Pacific Railroad Company
22	Average or basis of train-miles
23	do
24	do
25	do
26	do
27	do
28	do
29	do
30	do
31	do
32	do
33	do
34	do
35	do

[fol. 775]

Line Number of Sheet 3 of Response to Commission's Cost Orders	Basis Employed in Preparing Reports to State of Utah	Union Pacific Railroad Company
19		Average on basis of train-miles
20		do
21		do
22		do
23		do
24		do
25		do
26		do
27		do
28		do
29		do
30		do
31		do
32		do
33		do
34		do
35		do

Basis Employed in Preparing
Reports to State of Utah

Line Number of Sheet 4 of Response to Commission's Cost Orders	Union Pacific Railroad Company
1	*
2	*
3	*
4	Average on basis of train-miles
5	do
6	do
7	do
8	do
9	do
10	do
11	do
12	do
13	do
14	do
15	do
16	do

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

Bases Employed in Preparing Reports to State of Washington

Line Number of Sheet 1 of Responses to Commission's Cost Orders	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
1	Direct	Direct	Actual-from dispatchers' train sheets	*
2	do	do	do	*
3	do	do	Actual-according to helper districts	*
4	Estimated on basis of locomotive miles	do	do	*
5	Estimated on basis of 6 miles per hour	do	Calculated on basis of experience	*
6	Estimated on basis of train switching locomotive miles	do	do	*
7	Estimated on basis of 6 miles per hour	do	Actual	*
8	do	do	do	*
9	Direct	do	Actual-from conductors' wheel reports	*

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

Line Number of Sheet 1 of Responses to Commission's Cost Orders	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
10	Direct except that gross-ton-miles for cabooses was estimated by multiplying caboose car-miles by 20	Direct	Actual-from conductors' wheel reports	*
11	Direct	do	do	*
12	do	do	do	*
13	do	do	do	*
14	do	do	do	*
15	do	do	do	*
16	do	do	do	*
17	Direct except Railroad Owned cars rented on a mileage basis estimated on basis of Private-Line car-miles	do	Unavailable	*
18	Total	do	do	*
19	Direct	do	Actual-from dispatchers' train sheets	*

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

Bases Employed in Preparing Reports to State of Washington

Line Number of Sheet 1 of Responses to Commission's Cost Orders	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
31	Prorated on basis of locomotive miles	Locomotive-miles		
32	Blank	do		
33	Blank	do		
34	Prorated on basis of locomotive miles	do		
35	Blank	do		
36	Blank	do		
37	Total	No amount		Average on basis of locomotive-unit miles

Line Number of Sheet 2 of Responses to Commission's Cost Orders				
1	Prorated on basis of track miles	Partly direct, partly track-miles	Partly direct and balance on basis of track-miles maintained	Partly direct and partly average on basis of other MofW&S accounts
2	Partially direct and partially prorated on basis of track miles	Direct	Direct	Partly direct and partly average on basis of track miles

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[fol. 792]

Line Number of Sheet 4 of Responses to Commission's Cost Orders	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
22	Direct	Actual	*
23	do	do	*
24	do	do	*
25	do	System figures actual-received apportioned on basis of originated traffic, delivered apportioned on basis of terminated traffic	*
26	do	Assigned according to road miles over which tonnage moves	Actual
27	do	Calculated on basis of experience	*
28	do	do	*
29	do	Not applicable	*
30	Partly direct, partly train-miles	Actual as to time between terminals, Division involved apportioned on basis of train-miles	*

* Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

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Bases Employed in Preparing Reports to State of Washington

Line Number of Sheet 2 of Responses to Commission's Cost Orders	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
6	Partially direct and partially prorated on basis of track miles	Partly direct, partly track-miles	Direct as to maintenance, depreciation on basis of property valuation	Partly direct and partly average on basis of track-miles
7	do	do	do	do
8	do	No apportionment over Montana-North Dakota state line	do	do
9	do	Partly direct, partly track-miles	do	do
10	Blank	No amount	Not applicable	Direct charges
11	Direct	do	do	do
12	do	Direct	Direct as to maintenance, depreciation on basis of property valuation	do
13	Blank	No amount	do	do
14	Prorated to divisions on basis of wire miles and to states on basis of track miles	Partly direct, partly wire-miles	Partly direct and balance on basis of wire mileage as to maintenance, depreciation on basis of property valuation	Partly direct and partly average on basis of track-miles

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Bases Employed in Preparing Reports to State of Washington

Line Number of Sheet 2 of Responses to Commission's Cost Orders	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
15	Partially direct and partially prorated on basis of track miles	Partly direct, partly track-miles	Partly direct and balance on basis of track-miles maintained as to maintenance, depreciation on basis of property valuation	Partly direct and partly average on basis of track-miles
16	do	do	Direct as to maintenance, depreciation on basis of property valuation	do
17	do	Direct	do	do
18	do	No apportionment over Montana-North Dakota state line	do	Direct charges
19	Blank	No amount	Not applicable	do
20	Direct	Total of account direct, sub-accounts estimated	Direct	do
21	Blank	No amount	Not applicable	do
22	Prorated on basis of track miles	Partly direct, partly track-miles	Partly direct and balance on basis of track-miles maintained as to maintenance, depreciation on basis of property valuation	Partly direct and partly average on basis of other MofW&S accounts

Bases Employed in Preparing Reports to State of Washington

Line Number of Sheet 2 of Responses to Commission's Cost Orders	Chicago, Milwaukee St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
23	Partially direct and partially prorated on basis of track miles	Direct	Direct	Direct charges
24	Blank	do	do	do
25	Prorated on basis of track-miles	Partly direct, partly equated track-miles	Partly direct and balance on basis of track-miles maintained	Partly direct and partly average on basis of track-miles
26	do	Partly direct, partly track-miles	Direct	Partly direct and partly average on basis of track-miles
27	do	No amount	Direct as to maintenance, depreciation on basis of property valuation	do
28	do	Partly direct, partly track-miles	Partly direct and balance on basis of track-miles maintained	Direct charges
29	do	do	do	Partly direct and partly average on basis of track-miles
30	do	do	do	Average on basis of other M of W&S accounts

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[fol. 791]

Bases Employed in Preparing Reports to State of Washington

Line Number of Sheet 1 of Responses to Commission's Cost Orders	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
20	Direct	Direct	Actual-from dispatchers' train sheets	*
21	Prorated on basis of locomotive miles	Locomotive-miles		
22	Blank	do		
23	Prorated on basis of locomotive miles	do		
24	Blank	do		
25	Prorated on basis of locomotive miles	do		
26	Blank	do		
27	Total	No amount		Average on basis of locomotive-unit miles
28	Prorated on basis of locomotive miles	Locomotive-miles		
29	Blank	do		
30	Blank	do		

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

[fol. 793]

Bases Employed in Preparing Reports to State of Washington

Line Number of Sheet 2 of Responses to Commission's Cost Orders	Chicago, Milwaukee, St. Paul and Pacific Railroad Company (1)	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
3	Partially direct and partially prorated on basis of track miles	Direct	Direct	Partly direct and partly average on basis of track miles
4	do	Partly direct, partly track-miles	Direct and balance on basis of track-miles maintained	do
4a	See Account 266 in footnote	Prorated to states on 1945 percentages of total system charges, sub-accounts estimated	Apportioned on basis of property valuation	Direct charges
4b	Direct	Total of account direct, sub-accounts estimated	Direct as to maintenance, depreciation on basis of property valuation	do
5	Partially direct and partially prorated on basis of track miles	Partly direct, partly track-miles	Partly direct and balance on basis of previous year's charges to this account as to maintenance, depreciation on basis of property valuation	Partly direct and partly average on basis of track-miles

(1) All lines concerned: Acct. 266, each sub-account prorated on basis of property in depreciable road accounts; Acct. 267 direct. The bases shown for Accounts 266 and 267 also cover their sub-accounts which are included with the operating expense accounts, and the bases shown for each line covers the operating expense accounts only.

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Bases Employed in Preparing Reports to State of Washington

Line Number of Sheet 2 of Responses to Commission's Cost Orders	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
31	Prorated on basis of track-miles	Partly direct, partly track-miles	Partly direct and balance on basis of track-miles maintained	Partly direct and partly average on basis of track-miles
32	Partially direct and partially prorated on basis of track miles	do	Direct	Direct charges
33	do	do	do	do
34	Prorated on basis of track miles	No apportionment over Montana-North Dakota state line	do	Partly direct and partly average on basis of track-miles
35	Total	No amount		Partly direct and partly average on basis of methods described above for line 1 to 34, inclusive

Line Number of Sheet 3 of Responses to Commission's Cost Orders				
1	Prorated on basis of train miles	Partly direct, partly train-miles	Partly direct and balance on basis of train miles	Average on basis of train miles

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Bases Employed in Preparing
Reports to State of Washington

Line Number of Sheet 3 of Responses to Commission's Cost Orders	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
2	Partially direct and partially prorated on basis of train miles	Partly direct, partly train-miles	Direct as to Divisions which are apportioned to States on train-mile basis	Partly direct and partly average on basis of direct charges
3	do	No amount	Direct	do
4	Blank	Partly direct, partly train-miles	do	do
5	Prorated on basis of loaded car miles	Partly direct, partly freight train-miles	Partly direct and balance on basis of track-miles maintained	Average on basis of freight car miles
6	Blank	No amount	Direct	Direct charges
7	Partially direct and partially prorated on basis of train-miles	Partly direct, partly train-miles	Partly direct and balance on basis of train-miles	Partly direct and partly average on basis of direct charges
8	Partially direct and partially prorated on basis of yard switching locomotive miles	Direct	Direct	Direct charges
9	do	do	do	do
10	do	do	do	do

Bases Employed in Preparing Reports to State of Washington

Line Number of Sheet 3 of Responses to Commission's Cost Orders	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
22	Partially direct and partially prorated on basis of yard switching locomotive miles	Direct	Direct	Direct charges
23	Partially direct and partially prorated on basis of road locomotive miles	Partly direct, partly locomotive-miles	Direct as to Divisions which are apportioned to states on basis of miles run	do
24	do	do	do	do
25	do	Locomotive-miles	Apportioned on basis of locomotive-miles-steam and diesel separately	Average on basis of locomotive unit miles
26	Blank	Direct	Not applicable	Direct charges
27	Direct	do	do	do
28	Prorated on basis of road steam locomotive miles	do	Apportioned on basis of locomotive-miles-steam and diesel separately	do
29	do	Locomotive-miles	Apportioned on basis of locomotive-ton-miles steam and diesel separately	Average on basis of locomotive miles

Bases Employed in Preparing Reports to State of Washington

Line Number of Sheet 3 of Responses to Commission's Cost Orders	Chicago, Milwaukee, St Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
38	Direct	No amount	Not applicable	Direct charges
39	Blank	do	do	do
40	Prorated on basis of train-miles	Partly direct, partly train-miles	Apportioned on basis of train-miles	Average on basis of other Transportation accounts
41	do	do	do	Direct charges
42	Partially direct and partially prorated on basis of train miles	Direct	Direct	do
43	do	do	do	do
44	Prorated on basis of train miles	Partly direct, partly train-miles	Apportioned on basis of train-miles	Partly average on basis of revenues and partly average on basis of direct charges
45	do	do	Direct	Partly direct and partly average on basis of direct charges
46	do	Direct	do	do
47	do	do	do	Direct charges

Bases Employed in Preparing Reports to State of Washington

Line Number of Sheet 4 of Responses to Commission's Cost Orders	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
1	Direct	Direct	Actual-principal from dispatchers' train sheets, helper and light according to helper districts, train switching blank	*
2	do	do	Actual	*
3	do	do	Actual-from conductors' wheel reports	*
4	Partially direct and partially prorated on basis of track-miles	do	Direct	Partly direct and partly average on basis of track-miles
5	do	do	do	do
6	do	Partly direct, partly track-miles	Partly direct and balance on basis of track-miles maintained	do
7	do	do	Partly direct and balance on basis of previous year's charges to this account	do

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

Bases Employed in Preparing Reports to State of Washington

Line Number of Sheet 4 of Responses to Commission's Cost Orders	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
14	Partially direct and partially prorated on basis of yard switching locomotive miles	Direct	Direct	Direct charges
15	Partially direct and partially prorated on basis of road locomotive miles	Locomotive-miles	Apportioned on basis of locomotive-miles-steam and diesel separately	Average on basis of revenue engine miles
16	Prorated on basis of road locomotive miles	Direct	do	Direct charges
17	Direct	do	Actual	*
18	do	do	do	*
19	do	do	do	*
20	do	do	do	*
21	do	do	do	*
22	do	do	do	*
23	do	do	do	*
24	do	do	do	*

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

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Bases Employed in Preparing
Reports to State of Washington

Line Number of Sheet 3 of Responses to Commission's Cost Orders	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
11	Partially direct and partially prorated on basis of yard switching locomotive miles	Direct	Direct	Direct charges
12	do	do	do	do
13	do	Locomotive-miles	do	do
14	Blank	No amount	do	do
15	Direct	do	do	do
16	Partially direct and partially prorated on basis of yard switching locomotive miles	Direct	do	do
17	do	Locomotive-miles	do	do
18	do	do	do	do
19	do	do	do	do
20	do	Direct	do	do
21	do	do	do	do

Bases Employed in Preparing Reports to State of Washington

Line Number of Sheet 3 of Responses to Commission's Cost Orders	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
30	Prorated on basis of road steam locomotive miles	Locomotive-miles	Apportioned on basis of locomotive-ton-miles steam and diesel separately	Average on basis of locomotive miles
31	do	do	Apportioned on basis of locomotive-miles-steam and diesel separately	Partly direct and partly average on basis of locomotive miles
32	Partially direct and partially prorated on basis of train miles	Partly direct, partly train-miles	Direct as to Divisions which are apportioned to states on basis of miles run	Direct charges
33	Prorated on basis of car miles	Train-miles	Apportioned on basis of total car-miles	Average on basis of car miles
34	Partially direct and partially prorated on basis of train-miles	Partly direct, partly train-miles	Direct	Partly direct and partly average on basis of direct charges
35	do	Direct	do	do
36	do	do	do	Direct charges
37	do	Partly direct, partly wire-miles	Apportioned on basis of train-miles	Partly direct and partly average on basis of direct charges

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Bases Employed in Preparing
Reports to State of Washington

Line Number of Sheet 3 of Responses to Commission's Cost Orders	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
48	Prorated on basis of train miles	Mileage prorate or actual locality, if known, on all claims over $1000 and wreck claims over $200. Balance prorated on basis of test period percentages	Not applicable	Direct charges
49	do	Partly direct, partly train-miles	Partly direct and balance on basis of train-miles	Partly direct and partly average on basis of direct charges
50	Total	No amount		Partly direct and partly average on basis of methods described above for lines 1 to 49, inclusive

[fol. 805]

Bases Employed in Preparing Reports to State of Washington

Line Number of Sheet 4 of Responses to Commission's Cost Orders	Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
8	Acct. 266-each sub-account prorated on basis of property in depreciable road accounts (a)	Prorated to states on 1945 percentages of total system charges. Sub-accounts estimated.	Apportioned on basis of property valuation	Direct charges
9	Partially direct and partially prorated on basis of track miles	Partly direct, partly track-miles	Direct	Partly direct and partly average on basis of track miles
10	Same as line 8	Prorated to states on 1945 percentages of total system charges. Sub-accounts estimated	Apportioned on basis of property valuation	Direct charges
11	Direct	Locomotive-miles	Direct	do
12	Same as line 8	Prorated to states on 1945 percentages of total system charges. Sub-accounts estimated.	do	do
13	Partially direct and partially prorated on basis of yard switching locomotive miles	Locomotive-miles	do	do

(a) The bases shown for Account 266 also cover its sub-accounts which are included with the operating expense accounts, and the bases shown for each line covers the operating expense accounts only

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[fol. 807]

Bases Employed in Preparing Reports to State of Washington

Line Number of Sheet 4 of Responses to Commission's Cost Orders	Chicago, Milwaukee, St Paul and Pacific Railroad Company	Great Northern Railway	Northern Pacific Railway Company	Union Pacific Railroad Company
25	Direct	Direct	System figures actual-received apportioned on basis of originated traffic, delivered apportioned on basis of terminated traffic	*
26	do	do	Assigned according to road miles over which tonnage moves	Actual
27	do	do	Calculated on basis of experience	*
28	do	do	do	*
29	do	do	Not applicable	*
30	do	Partly direct, partly train-miles	Actual as to time between terminals, Division involved apportioned on basis of train-miles	*

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

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Bases Employed in Preparing Reports to State of Wyoming

Line Number of Sheet 1 of Responses to Commission's Cost Orders	Chicago, Burlington & Quincy Railroad Company	Chicago and North Western Railway (1) Company	Union Pacific Railroad Company
1	Actual	Basic record is wheel report and point to point mileage plus miles to and from engine house	*
2	Actual, except trailing Diesel-electric road-switcher unit miles estimated on basis of 2 unit operation	do	*
3	Actual	do	*
4	Actual, except trailing Diesel-electric road-switcher unit miles estimated on basis of 2 unit operation	do	*
5	Based on 6 miles per hour for actual hours	Based on special time study X 6 miles per hour	*
6	do	do	*

(1) For the Chicago and North Western Ry. the territory defined is located in the state of Wyoming and lies within its Black Hills Division. The statistical information is actual within the state of Wyoming except as indicated.

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

Bases Employed in Preparing Reports to State of Wyoming

Line Number of Sheet 1 of Responses to Commission's Cost Orders	Chicago, Burlington & Quincy Railroad Company	Chicago and North Western Railway Company	Union Pacific Railroad Company
14	Actual	Basic record is wheel report and point to point mileage	*
15	do	do	*
16	do	do	*
17	do	do	*
18	do	do	*
19	do	do	*
20	do	do	*
27			Average on basis of train-miles
37			do

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

Bases Employed in Preparing Reports to State of Wyoming

Line Number of Sheet 3 of Responses to Commission's Cost Orders	Chicago, Burlington & Quincy Railroad Company	Chicago and North Western Railway Company	Union Pacific Railroad Company
17	Directly allocated as far as possible, balance on basis of yard switching locomotive miles	Yard engine miles	Average on basis of train-miles
18	do	do	do
19	do	do	do
20	do	do	do
21	Directly allocated	do	do
22	do	do	do
23	Directly allocated as far as possible, balance on basis of road locomotive miles	Train miles - steam only	do
24	do	Train miles - Diesel and motor train	do
25	do	Train miles	do
26	do	No charge in account for Mountain-Pacific Territory	do
27	do	do	do

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[fol. 816]

Bases Employed in Preparing Reports to State of Wyoming

Line Number of Sheet 2 of Responses to Commission's Cost Orders	Chicago, Burlington & Quincy Railroad Company	Chicago and North Western Railway Company	Union Pacific Railroad Company
7	Direct allocated as far as possible, balance on basis of track miles	Equated miles of all track maintained - A.R.E.A. formula	Average on basis of train-miles
8	do	do	do
9	do	do	do
10	do	No charge in account for Mountain Pacific territory	do
11	do	do	do
12	do	do	do
13	do	do	do
14	do	Miles of wire	do
15	do	Equated miles of all track maintained - A.R.E.A. formula	do
16	do	No charge in account for Mountain Pacific territory	do
17	Directly allocated as far as possible, balance on basis of track miles	Direct charge	do

Bases Employed in Preparing Reports to State of Wyoming

Line Number of Sheet 2 of Responses to Commission's Cost Orders	Chicago, Burlington & Quincy Railroad Company	Chicago and North Western Railway Company	Union Pacific Railroad Company
30	Directly allocated as far as possible, balance on basis of track miles	Equated miles of all track maintained - A.R.E.A. formula	Average on basis of train-miles
31	do	do	do
32	do	do	do
33	do	do	do
34	do	do	do
35			do

Line Number of Sheet 3 of Responses to Commission's Cost Orders			
1	Directly allocated as far as possible, balance on basis of train miles	Train miles	Average on basis of train-miles
2	do	do	do
3	do	do	do
4	do	do	do

Bases Employed in Preparing Reports to State of Wyoming

Line Number of Sheet 1 of Responses to Commission's Cost Orders	Chicago, Burlington & Quincy Railroad Company	Chicago and North Western Railway Company	Union Pacific Railroad Company
7	Based on 6 miles per hour for actual hours	Actual yard locomotive hours X 6 miles per hour	*
8	do	do	*
9	Based on average weight, by classes, of locomotive actually operated in this territory	Composite basis-gross ton miles of cars and contents and locomotive miles each state	*
10	Net actual, tare on basis of average weight of all freight carrying cars	Actual as far as possible from division-balance on miles of road in each state for each interstate run	*
11	Based on average weight of each class of passenger train car plus 150 pounds per passenger	Net ton miles plus estimated tare weight of cars	*
12	Actual	Basic record is wheel report and point to point mileage	*
13	do	do	*

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

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[fol. 811]

Bases Employed in Preparing Reports to State of Wyoming

Line Number of Sheet 2 of Responses to Commission's Cost Orders	Chicago, Burlington & Quincy Railroad Company	Chicago and North Western Railway (a) Company	Union Pacific Railroad Company (b)
1	Directly allocated as far as possible, balance on basis of track miles	Equated miles of all track maintained - A.R.E.A. formula	Average on basis of train-miles
2	do	Charges for ties and rails are localized-all others on basis of equated miles of all track maintained-A.R.E.A. formula	do
3	do	do	do
4	do	do	do
4a			do
4b			do
5	do	Equated miles of all track maintained - A.R.E.A. formula	do
6	do	do	do

(a) Expenses are compiled on a Division basis and separation made between states within the Division on the bases indicated.

(b) The response to the Commission's cost orders excludes from Territory I the lines east of Cheyenne. The separation of expenses within Wyoming was accomplished by use of the same bases of separation as were employed in preparing the report to the state of Wyoming.

Bases Employed in Preparing Reports to State of Wyoming

Line Number of Sheet 2 of Responses to Commission's Cost Orders	Chicago, Burlington & Quincy Railroad Company	Chicago and North Western Railway Company	Union Pacific Railroad Company
18	Directly allocated as far as possible, balance on basis of track miles	Equated miles of all track maintained - A.R.E.A. formula	Average on basis of train-miles
19	do	Direct charge	do
20	do	do	do
21	do	No charge in account for Mountain Pacific territory	do
22	do	Equated miles of all track maintained - A.R.E.A. formula	do
23	do	do	do
24	do	No charge in account for Mountain Pacific territory	do
25	do	Equated miles of all track maintained-A.R.E.A. formula	do
26	do	do	do
27	do	do	do
28	do	do	do
29	do	do	do

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(page 682 is over guard - hole)

Bases Employed in Preparing Reports to State of Wyoming

Line Number of Sheet 3 of Responses to Commission's Cost Orders	Chicago, Burlington & Quincy Railroad Company	Chicago and North Western Railway Company	Union Pacific Railroad Company
5	Directly allocated as far as possible, balance on basis of train miles	Freight car miles	Average on basis of train-miles
6	do	No charge in account for Mountain-Pacific Territory	do
7	do	Train miles	do
8	Directly allocated as far as possible, balance on basis of yard switching locomotive miles	Yard engine miles	do
9	do	do	do
10	do	do	do
11	do	do	do
12	do	do	do
13	do	do	do
14	do	No charge in account for Mountain-Pacific Territory	do
15	do	do	do
16	do	Yard engine miles	do

Bases Employed in Preparing Reports to State of Wyoming

Line Number of Sheet 3 of Responses to Commission's Cost Orders	Chicago, Burlington & Quincy Railroad Company	Chicago and North Western Railway Company	Union Pacific Railroad Company
38	Directly allocated as far as possible, balance on basis of train miles	No charge in account for Mountain-Pacific territory	Average on basis of train-miles
39	do	do	do
40	do	Train miles	do
41	do	do	do
42	do	do	do
43	do	do	do
44	do	do	do
45	do	do	do
46	do	do	do
47	do	do	do
48	Directly allocated as far as possible, balance on basis of road miles, gross, ton miles or train miles as appropriate	Tons carried	do
49	Directly allocated as far as possible, balance on basis of train miles	Train miles	do

Bases Employed in Preparing Reports to State of Wyoming

Line Number of Sheet 4 of Responses to Commission's Cost Orders	Chicago, Burlington & Quincy Railroad Company	Chicago and North Western Railway Company	Union Pacific Railroad Company
8	Directly allocated as far as possible, balance on basis of track miles	Equated miles of all tracks maintained-A.R.E.A. formula	Average on basis of train-miles
9	do	do	do
10	do	do	do
11	do	No charge in account for Mountain-Pacific Territory	do
12	do	do	do
13	Directly allocated as far as possible, balance on basis of yard switching locomotive miles	Yard engine miles	do
14	do	do	do
15	Directly allocated as far as possible, balance on basis of road locomotive miles	Train miles	do
16	do	do	do
17	Actual	Actual miles	*

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

Basis Employed in Assignment of Expenses and Statistics to Operating Divisions of THE ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM In Territory I (Mountain-Pacific)

Line Number of Sheet 1 of Response to Commission's Cost Orders	Pecos Division	New Mexico Division	Albuquerque Division
1	Wholly Direct	Wholly Direct	Wholly Direct
2	" "	" "	" "
3	" "	" "	" "
4	" "	" "	" "
5	" "	" "	" "
6	" "	" "	" "
7	" "	" "	" "
8	" "	" "	" "
9	" "	" "	" "
10	" "	" "	" "
11	" "	" "	" "
12	" "	" "	" "
13	" "	" "	" "
14	" "	" "	" "
15	" "	" "	" "
16	" "	" "	" "
17	..... Not compiled by Operating Division, developed from special study.		
18	..... Not compiled by Operating Division.		
19	Wholly Direct	Wholly Direct	Wholly Direct
20	" "	" "	" "
21	Part direct, part allocated on Locomotive Miles	Part direct, part allocated on Locomotive Miles	Part direct, part allocated on Locomotive Miles
23	Part direct, part allocated on Locomotive Unit Miles	Part direct, part allocated on Locomotive Unit Miles	Part direct, part allocated on Locomotive Unit Miles

Basis Employed in Assignment of Expenses and Statistics to Operating Divisions of THE ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM In Territory I (Mountain-Pacific)

Line Number of Sheet 1 of Response to Commission's Cost Orders	Pecos Division	New Mexico Division	Albuquerque Division
28	Part direct, part allocated on Locomotive Miles	Part direct, part allocated on Locomotive Miles	Part direct, part allocated on Locomotive Miles
31	Part direct, part allocated on Locomotive Unit Miles	Part direct, part allocated on Locomotive Unit Miles	Part direct, part allocated on Locomotive Unit Miles
Line Number of Sheet 2 of Response to Commission's Cost Orders			
1	Part direct, part allocated on Accts. 202 to 273 incl.	Part direct, part allocated on Accts. 202 to 273 incl.	Part direct, part allocated on Accts. 202 to 273 incl.
2	Part direct, part allocated on equated track miles and switching locomotive hours. Terminals serving two divisions charged to division in control.	Part direct, part allocated on equated track miles and switching locomotive hours. Terminals serving two divisions charged to division in control.	Part direct, part allocated on equated track miles and switching locomotive hours.
3	Part direct, part allocated on equated track miles and preponderant use. Terminals serving two divisions charged to division in control.	Part direct, part allocated on equated track miles and preponderant use. Terminals serving two divisions charged to division in control.	Part direct, part allocated on equated track miles and preponderant use.

Basis Employed in Assignment of Expenses and Statistics to Operating Divisions of
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM
In Territory I (Mountain-Pacific)

Line Number of Sheet 2 of Response to Commission's Cost Orders	Pecos Division	New Mexico Division	Albuquerque Division
4	Part direct, part allocated on equated track miles and Gross Ton Miles of cars, contents and locomotives. Terminals serving two divisions charged to division in control.	Part direct, part allocated on equated track miles and Gross Ton Miles of cars, contents and locomotives. Terminals serving two divisions charged to division in control.	Part direct, part allocated on equated track miles and Gross Ton Miles of cars, contents and locomotives
4a	Part direct, part allocated on Accts. 202 to 273 incl.	Part direct, part allocated on Accts. 202 to 273 incl.	Part direct, part allocated on Accts. 202 to 273 incl.
4b	Part direct, part allocated on Accts. 202 to 273 incl.	Part direct, part allocated on Accts. 202 to 273 incl.	Part direct, part allocated on Accts. 202 to 273 incl.
5	Part direct, part allocated on Accts. 202-221 and 202-273 incl. for depreciation portion. Terminals serving two divisions charged to division in control.	Part direct, part allocated on Accts. 202-221 and 202-273 incl. for depreciation portion. Terminals serving two divisions charged to division in control.	Part direct, part allocated on Accts. 202-221 and 202-273 incl. for depreciation portion.
6	Part direct, part allocated on Accts. 202-221 and 202-273 incl. for depreciation portion. Terminals serving two divisions charged to division in control.	Part direct, part allocated on Accts. 202-221 and 202-273 incl. for depreciation portion. Terminals serving two divisions charged to division in control.	Part direct, part allocated on Accts. 202-221 and 202-273 incl. for depreciation portion.

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Bases Employed in Preparing Reports to State of Wyoming

Line Number of Sheet 3 of Responses to Commission's Cost Orders	Chicago, Burlington & Quincy Railroad Company	Chicago and North Western Railway Company	Union Pacific Railroad Company
50			Average on basis of train-miles
Line Number of Sheet 4 of Responses to Commission's Cost Orders			
1	Actual except train switching based on 6 miles per hour for actual hours	We have no passenger operation in the state of Wyoming	*
2	Based on 6 miles per hour for actual hours	do	*
3	Actual	do	*
4	Directly allocated as far as possible, balance on basis of track miles	Charges for ties and rails are localized-all others on basis of equated miles of all track maintained-A.R.E.A. formula	Average on basis of train-miles
5	do	do	do
6	do	do	do
7	do	Equated miles of all tracks maintained-A.R.E.A. formula	do

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

Bases Employed in Preparing Reports to State of Wyoming

Line Number of Sheet 4 of Responses to Commission's Cost Orders	Chicago, Burlington & Quincy Railroad Company	Chicago and North Western Railway Company	Union Pacific Railroad Company
18	Actual	Actual Miles	*
19	do	Freight way-bill	*
20	do	do	*
21	do	do	*
22	Actual four months - Feb., May, Aug., and Nov. 1951	Agents records	*
23	do	do	*
24	Actual	Freight way-bill	*
25	do	do	*
26	do	Freight way-bill and point to point mileage	Actual
27	Based on 6 miles per hour for actual hours	Special time study X 6 miles per hour	*
28	do	do	*
29	do	do	*
30	Actual	Based on wheel report; train hours on basis of train miles	*

*Response to Commission's cost orders prepared using data maintained by operating divisions or operating districts, as explained beginning at page 174 of this statement.

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[fol. 823]

Basis Employed in Assignment of Expenses and Statistics to Operating Divisions of THE ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM In Territory I (Mountain-Pacific)

Line Number of Sheet 1 of Response to Commission's Cost Orders	Los Angeles Division	Valley Division	San Francisco Terminal
1	Wholly Direct	Wholly Direct	None
2	" "	" "	"
3	" "	" "	"
4	" "	" "	"
5	" "	" "	"
6			
7	" "	" "	Wholly Direct
8	" "	" "	" "
9	" "	" "	None
10	" "	" "	"
11	" "	" "	"
12	" "	" "	"
13	" "	" "	"
14	" "	" "	"
15	" "	" "	"
16	" "	" "	"
17	..... Not compiled by Operating Division, developed from special study.		
18	..... Not compiled by Operating Division.		
19	Wholly Direct	Wholly Direct	None
20	" "	" "	"
21	Part direct, part allocated on Locomotive Miles	Part direct, part allocated on Locomotive Miles	Part direct, part allocated on Locomotive Miles
23	Part direct, part allocated on Locomotive Unit Miles	Part direct, part allocated on Locomotive Unit Miles	Part direct, part allocated on Locomotive Unit Miles

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Basis Employed in Assignment of Expenses and Statistics to Operating Divisions of
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM
In Territory I (Mountain-Pacific)

Line Number of Sheet 1 of Response to Commission's Cost Orders	Los Angeles Division	Valley Division	San Francisco Terminal
28	Part direct, part allocated on Locomotive Miles	Part direct, part allocated on Locomotive Miles	Part direct, part allocated on Locomotive Miles
31	Part direct, part allocated on Locomotive Unit Miles	Part direct, part allocated on Locomotive Unit Miles	Part direct, part allocated on Locomotive Unit Miles

Line Number of Sheet 2 of Response to Commission's Cost Orders			
1	Part direct, part allocated on Accts. 202 to 273 incl.	Part direct, part allocated on Accts. 202 to 273 incl.	Part direct, part allocated on Accts. 202 to 273 incl.
2	Part direct, part allocated on equated track miles and switching locomotive hours.	Part direct, part allocated on equated track miles and switching locomotive hours.	Part direct, part allocated on equated track miles and switching locomotive hours.
3	Part direct, part allocated on equated track miles and preponderant use.	Part direct, part allocated on equated track miles and preponderant use.	None

[fol. 825]

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Basis Employed in Assignment of Expenses and Statistics to Operating Divisions of
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM
In Territory I (Mountain-Pacific)

Line Number of Sheet 2 of Response to Commission's Cost Orders	Los Angeles Division	Valley Division	San Francisco Terminal
4	Part direct, part allocated on equated track miles and Gross Ton Miles of cars, contents and locomotives.	Part direct, part allocated on equated track miles and Gross Ton Miles of cars, contents and locomotives.	None
4a	Part direct, part allocated on Accts. 202 to 273 incl.	Part direct, part allocated on Accts. 202 to 273 incl.	Part direct, part allocated on Accts. 202 to 273 incl.
4b	Part direct, part allocated on Accts. 202 to 273 incl.	Part direct, part allocated on Accts. 202 to 273 incl.	Part direct, part allocated on Accts. 202 to 273 incl.
5	Part direct, part allocated on Accts. 202-221 and 202-273 incl. for depreciation portion.	Part direct, part allocated on Accts. 202-221 and 202-273 incl. for depreciation portion.	Part direct, part allocated on Accts. 202-221 and 202-273 incl. for depreciation portion.
6	Part direct, part allocated on Accts. 202-221 and 202-273 incl. for depreciation portion.	Part direct, part allocated on Accts. 202-221 and 202-273 incl. for depreciation portion.	Part direct, part allocated on Accts. 202-221 and 202-273 incl. for depreciation portion

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Basis Employed in Assigment of Expenses and Statistics to Operating Divisions of
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM
In Territory I (Mountain-Pacific)

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Line Number of Sheet 2 of Response to Commission's Cost Order	Pecos Division	New Mexico Division	Albuquerque Division
7	Part direct, part allocated on Accts. 382 and 394 and 202 to 273 incl. for depreciation portion. Terminals serving two divisions charged division in control.	Part direct, part allocated on Accts. 382 and 394 and 202 to 273 incl. for depreciation portion. Terminals serving two divisions charged division in control	Part direct, part allocated on Accts. 382 and 394 and 202 to 273 incl. for depreciation portion.
8	Part direct, part allocated on Accts. 382 and 394 and 202 to 273 incl. for depreciation portion, Terminals serving two divisions charged to division in control.	Part direct, part allocated on Accts. 382 and 394 and 202 to 273 incl. for depreciation portion. Terminals serving two divisions charged to division in control.	Part direct, part allocated on Accts. 382 and 394 and 202 to 273 incl. for depreciation portion.
9	Part direct, part allocated on Accts. 308, 311, 314, 323, 388 and 400 and 202-273 incl. for depreciation portion. Terminals serving two divisions charged to division in control.	Part direct, part allocated on Accts. 308, 311, 314, 323, 388 and 400 and 202-273 incl. for depreciation portion. Terminals serving two divisions charged to division in control.	Part direct, part allocated on Accts. 308, 311, 314, 323, 388 and 400 and 202-273 incl. for depreciation portion.
10	None	None	None
11	None	None	None

Basis Employed in Assignment of Expenses and Statistics to Operating Divisions of
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM
In Territory I (Mountain-Pacific)

Line Number of Sheet 2 of Response to Commission's Cost Orders	Pecos Division	New Mexico Division	Albuquerque Division
12	Part Direct, part allocated on cars handled, and 202-273 incl. for depreciation portion.	Part direct, part allocated on cars handled, and 202-273 incl. for depreciation portion.	Part direct, part allocated on cars handled, and 202-273 incl. for depreciation portion.
13	None	None	None
14	Part direct, part allocated on Accts. 201, 301, 351, 371, and 372, and 202 to 273 incl. for depreciation portion. Terminals serving two divisions charged to division in control.	Part direct, part allocated on Accts. 201, 301, 351, 371, and 372, and 202 to 273 incl. for depreciation portion. Terminals serving two divisions charged to division in control.	Part direct, part allocated on Accts. 201, 301, 351, 371, and 372 and 202 to 273 incl. for depreciation portion.
15	Part direct, part allocated on transportation service train hours, and 202-273 incl. for depreciation portion. Terminals serving two divisions charged to division in control.	Part direct, part allocated on transportation service train hours, and 202-273 incl. for depreciation portion. Terminals serving two divisions charged to division in control.	Part direct, part allocated on transportation service train hours, and 202-273 incl. for depreciation portion.
16	Part direct, part allocated on Accts. 308, 311, 314, 323, and 326, and 202-273 incl. for depreciation portion. Terminals serving two divisions charged to division in control.	Part direct, part allocated on Accts. 308, 311, 314, 323, and 326, and 202-273 incl. for depreciation portion. Terminals serving two divisions charged to division in control.	Part direct, part allocated on Accts. 308, 311, 314, 323, and 326, and 202-273 incl. for depreciation portion.

Line Number of Sheet 3 of Responses to Commission's Cost Orders	Chicago, Burlington & Quincy Railroad Company	Chicago and North Western Railway Company	Union Pacific Railroad Company
28	Directly allocated as far as possible, balance on basis of road locomotive miles	Train miles	Average on basis of train-miles
29	do	do	do
30	do	do	do
31	do	do	do
32	Directly allocated as far as possible, balance on basis of train miles	do	do
33	do	do	do
34	do	do	do
35	do	do	do
36	Directly allocated, state line bridges 1/2 to each state	No charge in account for Mountain-Pacific territory	do
37	Directly allocated as far as possible, balance on basis of train miles	Miles of wire	do

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Basis Employed in Assignment of Expenses and Statistics to Operating Divisions of
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM
In Territory I (Mountain-Pacific)

Line Number of Sheet 2 of Response to Commission's Cost Orders	Pecos Division	New Mexico Division	Albuquerque Division
17	Part direct, part allocated on Accts. 308, 311, 314, 323, and 326, and 202-273 incl. for depreciation portion. Terminals serving two divisions charged to division in control.	Part direct, part allocated on Accts. 308, 311, 314, 323, and 326, and 202-273 incl. for depreciation portion. Terminals serving two divisions charged to division in control.	Part direct, part allocated on Accts. 308, 311, 314, 323, and 326, and 202-273 incl. for depreciation portion.
18	Part direct, part allocated on transportation service train hours, and 202-273 incl. for depreciation portion. Terminals serving two divisions charged to division in control.	Part direct, part allocated on transportation service train hours, and 202-273 incl. for depreciation portion. Terminals serving two divisions charged to division in control.	Part direct, part allocated on transportation service train hours, and 202-273 incl. for depreciation portion.
19	None	None	None
20	Part direct, part allocated on Accts. 202-273 incl.	Part direct, part allocated on Accts. 202-273 incl.	Part direct, part allocated on Accts. 202-273 incl.
21	None	None	None
22	Part direct, part allocated on Accts. 202-221 incl. and 202-273 incl. for depreciation portion.	Part direct, part allocated on Accts. 202-221 incl. and 202-273 incl. for depreciation portion.	Part direct, part allocated on Accts. 202-221 incl. and 202-273 incl. for depreciation portion
23	Part direct, part allocated on Accts. 202 to 273 incl.	Part direct, part allocated on Accts. 202 to 273 incl.	Part direct, part allocated on Accts. 202 to 273 incl.

Basis Employed in Assignment of Expenses and Statistics to Operating Divisions of
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM
In Territory I (Mountain-Pacific)

Line Number of Sheet 2 of Response to Commission's Cost Orders	Pecos Division	New Mexico Division	Albuquerque Division
24	Part direct, part allocated on Accts. 202 to 273 incl.	Part direct, part allocated on Accts. 202 to 273 incl.	Part direct, part allocated on Accts. 202 to 273 incl.
25	Part direct, part allocated on Accts. 202 to 221 incl.	Part direct, part allocated on Accts. 202 to 221 incl.	Part direct, part allocated on Accts. 202 to 221 incl.
26	Wholly allocated on Accts. 202-221 incl. Terminals serving two divisions charged to division in control.	Wholly allocated on Accts. 202-221 incl. Terminals serving two divisions charged to division in control.	Part direct, part allocated on Accts. 202-221 incl.
27	Part direct, part allocated on Accts. 202-221 incl. and 202-273 incl. for depreciation portion. Terminals serving two divisions charged to division in control.	Part direct, part allocated on Accts. 202-221 incl., and 202 to 273 incl. for depreciation portion. Terminals serving two divisions charged to division in control.	Part direct, part allocated on Accts. 202-221 incl., and 202-273 incl. for depreciation portion.
28	Part direct, part allocated on Accts. 202-273 incl. Terminals serving two divisions charged to division in control.	Part direct, part allocated on Accts. 202-273 incl. Terminals serving two divisions charged to division in control.	Part direct, part allocated on Accts. 202-273 incl.
29	Part direct, part allocated on Accts. 202-273 incl.	Part direct, part allocated on Accts. 202-273 incl.	Part direct, part allocated on Accts. 202-273 incl.
30	Part direct, part allocated on Accts. 202-273 incl.	Part direct, part allocated on Accts. 202-273 incl.	Part direct, part allocated on Accts. 202-273 incl.

Basis Employed in Assignment of Expenses and Statistics to Operating Divisions of
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM
In Territory I (Mountain-Pacific)

Line Number of Sheet 2 of Response to Commission's Cost Orders	Los Angeles Division	Valley Division	San Francisco Terminal
7	Part direct, part allocated on Accts. 382 and 394 and 202 to 273 incl. for depreciation portion.	Part direct, part allocated on Accts. 382 and 394 and 202 to 273 incl. for depreciation portion.	Part direct, part allocated on Accts. 382 and 394 and 202 to 273 incl. for depreciation portion.
8	Part direct, part allocated on Accts. 382 and 394 and 202 to 273 incl. for depreciation portion.	Part direct, part allocated on Accts. 382 and 394 and 202 to 273 incl. for depreciation portion.	Part direct, part allocated on Accts. 382 and 394 and 202 to 273 incl. for depreciation portion.
9	Part direct, part allocated on Accts. 308, 311, 314, 323, 388 and 400 and 202-273 incl. for depreciation portion.	Part direct, part allocated on Accts. 308, 311, 314, 323, 388 and 400 and 202-273 incl. for depreciation portion.	Part direct, part allocated on Accts. 308, 311, 314, 323, 388 and 400 and 202-273 incl. for depreciation portion.
10	None	None	None
11	None	None	None

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Line Number of Sheet 2 of Response to Commission's Cost Orders	Los Angeles Division	Valley Division	San Francisco Terminal
12	Part direct, part allocated on cars handled, and 202-273 incl. for depreciation portion.	Part direct, part allocated on cars handled, and 202-273 incl. for depreciation portion.	Part direct, part allocated on cars handled, and 202-273 incl. for depreciation portion.
13	None	None	None
14	Part direct, part allocated on Accts. 201, 301, 351, 371, and 372 and 202 to 273 incl. for depreciation portion.	Part direct, part allocated on Accts. 201, 301, 351 371, and 372 and 202 to 273 incl. for depreciation portion.	Part direct, part allocated on Accts. 201, 301, 351, 371, and 372 and 202 to 273 incl for depreciation portion.
15	Part direct, part allocated on transportation service train hours, and 202-273 incl. for depreciation portion.	Part direct, part allocated on transportation service train hours, and 202-273 incl. for depreciation portion.	Part direct, part allocated on transportation service train hours, and 202-273 incl. for depreciation portion.
16	Part direct, part allocated on Accts. 308, 311, 314, 323, and 326, and 202-273 incl. for depreciation portion.	Part direct, part allocated on Accts. 308, 311, 314, 323, and 326, and 202-273 incl. for depreciation portion.	Part direct, part allocated on Accts. 308, 311, 314, 323, and 326, and 202-273 incl. for depreciation portion.

Basis Employed in Assignment of Expenses and Statistics to Operating Divisions of
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM
In Territory I (Mountain-Pacific)

Line Number of Sheet 2 of Response to Commission's Cost Orders	Los Angeles Division	Valley Division	San Francisco Terminal
17	Part direct, part allocated on Accts. 308, 311, 314, 323 and 326, and 202-273 incl. for depreciation portion.	Part direct, part allocated on Accts. 308, 311, 314, 323, and 326, and 202-273 incl. for depreciation portion.	Part direct, part allocated on Accts. 308, 311, 314, 323, and 326, and 202-273 incl. for depreciation portion.
18	Part direct, part allocated on transportation service train hours, and 202-273 incl. for depreciation portion.	Part direct, part allocated on transportation service train hours, and 202-273 incl. for depreciation portion.	Part direct, part allocated on transportation service train hours, and 202-273 incl. for depreciation portion.
19	None	None	None
20	Part direct, part allocated on Accts. 202-273 incl.	Part direct, part allocated on Accts. 202-273 incl.	Part direct, part allocated on Accts. 202-273 incl.
21	None	None	None
22	Part direct, part allocated on Accts. 202-221 incl. and 202-273 incl. for depreciation portion.	Part direct, part allocated on Accts. 202-221 incl. and 202-273 incl. for depreciation portion.	Part direct, part allocated on Accts. 202-221 incl. and 202-273 incl. for depreciation portion.
23	Part direct, part allocated on Accts. 202 to 273 incl.	Part direct, part allocated on Accts. 202 to 273 incl.	Part direct, part allocated on Accts. 202 to 273 incl.

Basis Employed in Assignment of Expenses and Statistics to Operating Divisions of
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM
In Territory I (Mountain-Pacific)

Line Number of Sheet 2 of Response to Commission's Cost Orders	Los Angeles Division	Valley Division	San Francisco Terminal
24	Part direct, part allocated on Accts. 202 to 273 incl.	Part direct, part allocated on Accts. 202 to 273 incl.	Part direct, part allocated on Accts. 202 to 273 incl.
25	Part direct, part allocated on Accts. 202 to 221 incl.	Part direct, part allocated on Accts. 202 to 221 incl.	Part direct, part allocated on Accts. 202 to 221 incl.
26	Part direct, part allocated on Accts. 202-221 incl.	Part direct, part allocated on Accts. 202-221 incl.	Part direct, part allocated on Accts. 202-221 incl.
27	Part direct, part allocated on Accts. 202-221 incl.,and 202-273 incl. for depreciation portion.	Part direct, part allocated on Accts. 202-221 incl.,and 202-273 incl. for depreciation portion.	Part direct, part allocated on Accts. 202-221 incl.,and 202-273 incl. for depreciation portion.
28	Part direct, part allocated on Accts. 202-273 incl.	Part direct, part allocated on Accts. 202-273 incl.	Part direct, part allocated on Accts. 202-273 incl.
29	Part direct, part allocated on Accts. 202-273 incl.	Part direct, part allocated on Accts. 202-273 incl.	Part direct, part allocated on Accts. 202-273 incl.
30	Part direct, part allocated on Accts. 202-273 incl.	Part direct, part allocated on Accts. 202-273 incl.	Part direct, part allocated on Accts. 202-273 incl.

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Line Number of Sheet 2 of Response to Commission's Cost Orders	Pecos Division	New Mexico Division	Albuquerque Division
31	Part direct, part allocated on Accts. 202-273 incl.	Part direct, part allocated on Accts. 202-273 incl.	Part direct, part allocated on Accts. 202-273 incl.
32	Part direct, part allocated on Acct. 394, yard switching locomotive hours, transportation service train hours and Accts. 202-273 incl. Terminals serving two divisions charged to division in control.	Part direct, part allocated on Acct. 394, yard switching locomotive hours, transportation service train hours and Accts. 202-273 incl. Terminals serving two divisions charged to division in control.	Part direct, part allocated on Acct. 394, yard switching locomotive hours, transportation service train hours and Accts. 202-273 incl.
33	Part direct, part allocated on Accts. 202-273 incl. Terminals serving two divisions credited to division in control.	Part direct, part allocated on Accts. 202-273 incl. Terminals serving two divisions credited to division in control.	Part direct, part allocated on Accts. 202-273 incl.
34	Part direct, part allocated on Accts. 202-221 incl. Terminals serving two divisions charged to division in control.	Part direct, part allocated on Accts. 202-221 incl. Terminals serving two divisions charged to division in control.	Part direct, part allocated on Accts. 202-221 incl.

Basis Employed in Assignment of Expenses and Statistics to Operating Divisions of
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM
In Territory I (Mountain-Pacific)

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Line Number of Sheet 3 of Response to Commission's Cost Orders	Pecos Division	New Mexico Division	Albuquerque Division
1	Part direct, part allocated on total transportation accounts omitting Accts. 390, 391, 407, 410 to 413.	Part direct, part allocated on total transportation accounts omitting Accts. 390, 391, 407, 410 to 413.	Part direct, part allocated on total transportation accounts omitting Accts. 390, 391, 407, 410 to 413.
2	Wholly allocated on transportation service train hours.	Wholly allocated on transportation service train hours.	Wholly allocated on transportation service train hours.
3	Part direct, part allocated on direct charges. Terminals serving two divisions charged to division in control.	Part direct, part allocated on direct charges. Terminals serving two divisions charged to division in control.	Part direct, part allocated on direct charges.
4	Part direct, part allocated on direct charges. Terminals serving two divisions charged to division in control.	Part direct, part allocated on direct charges. Terminals serving two divisions charged to division in control.	Part direct, part allocated on direct charges.
5	Wholly allocated on freight car miles.	Wholly allocated on freight car miles.	Wholly allocated on freight car miles.
6	None	None	None
7	Part direct, part allocated on direct charges. Terminals serving two divisions charged to division in control.	Part direct, part allocated on direct charges. Terminals serving two divisions charged to division in control.	Part direct, part allocated on direct charges.

Basis Employed in Assignment of Expenses and Statistics to Operating Divisions of
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM
In Territory I (Mountain-Pacific)

Line Number of Sheet 3 of Response to Commission's Cost Orders	Pecos Division	New Mexico Division	Albuquerque Division
8	Part direct, part allocated on yard switching locomotive hours. Terminals serving two divisions charged to division in control.	Part direct, part allocated on yard switching locomotive hours. Terminals serving two divisions charged to division in control.	Part direct, part allocated on yard switching locomotive hours.
9	Part direct, part allocated on yard switching locomotive hours. Terminals serving two divisions charged to division in control.	Part direct, part allocated on yard switching locomotive hours. Terminals serving two divisions charged to division in control.	Part direct, part allocated on yard switching locomotive hours.
10	Part direct, part allocated on yard switching locomotive hours. Terminals serving two divisions charged to division in control.	Part direct, part allocated on yard switching locomotive hours. Terminals serving two divisions charged to division in control.	Part direct, part allocated on yard switching locomotive hours.
11	Part direct, part allocated on yard switching locomotive hours. Terminals serving two divisions charged to division in control.	Part direct, part allocated on yard switching locomotive hours. Terminals serving two divisions charged to division in control.	Part direct, part allocated on yard switching locomotive hours.
12	Part direct, part allocated on yard switching locomotive hours. Terminals serving two divisions charged to division in control.	Part direct, part allocated on yard switching locomotive hours. Terminals serving two divisions charged to division in control.	Part direct, part allocated on yard switching locomotive hours.

Basis Employed in Assignment of Expenses and Statistics to Operating Divisions of
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM
In Territory I (Mountain-Pacific)

Line Number of Sheet 3 of Response to Commission's Cost Orders	Pecos Division	New Mexico Division	Albuquerque Division
13	Part direct, part allocated on yard switching locomotive hours. Terminals serving two divisions charged to division in control.	Part direct, part allocated on yard switching locomotive hours. Terminals serving two divisions charged to division in control.	Part direct, part allocated on yard switching locomotive hours.
14	None	None	None
15	None	None	None
16	Wholly allocated on equated net tons of fuel and yard switching locomotive hours.	Wholly allocated on equated net tons of fuel and yard switching locomotive hours.	Wholly allocated on equated net tons of fuel and yard switching locomotive hours.
17	Wholly allocated on yard switching locomotive miles.	Wholly allocated on yard switching locomotive miles.	Wholly allocated on yard switching locomotive miles.
18	Wholly allocated on yard switching locomotive miles.	Wholly allocated on yard switching locomotive miles.	Wholly allocated on yard switching locomotive miles.
19	Part direct, part allocated on weighted engine handlings and yard switching locomotive hours. Terminals serving two divisions charged to division in control.	Part direct, part allocated on weighted engine handlings and yard switching locomotive hours. Terminals serving two divisions charged to division in control.	Part direct, part allocated on weighted engine handlings and yard switching locomotive hours.

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[Fol. 844]

Line Number of Sheet 3 of Response to Commission's Cost Orders	Pecos Division	New Mexico Division	Albuquerque Division
20	Part direct, part allocated on yard switching locomotive hours. Terminals serving two divisions are charged to division in control.	Part direct, part allocated on yard switching locomotive hours. Terminals serving two divisions are charged to division in control.	Part direct, part allocated on yard switching locomotive hours.
21	Part direct, part allocated on yard switching locomotive hours, transportation service train hours and Accts. 372-389 incl. Terminals serving two divisions are charged to division in control.	Part direct, part allocated on yard switching locomotive hours, transportation service train hours and Accts. 372-389 incl. Terminals serving two divisions are charged to division in control.	Part direct, part allocated on yard switching locomotive hours, transportation service train hours and Accts. 372-389 incl.
22	Part direct, part allocated on Accts. 377-389 incl. Terminals serving two divisions are charged to division in control.	Part direct, part allocated on Accts. 377-389 incl. Terminals serving two divisions are charged to division in control.	Part direct, part allocated on Accts. 377-389 incl.
23	Part direct, part allocated on locomotive miles.	Part direct, part allocated on locomotive miles.	Part direct, part allocated on locomotive miles.
24	Part direct, part allocated on locomotive miles	Part direct, part allocated on locomotive miles.	Part direct, part allocated on locomotive miles.
25	Part direct, part allocated on locomotive miles and on locomotive unit miles.	Part direct, part allocated on locomotive miles and on locomotive unit miles.	Part direct, part allocated on locomotive miles and on locomotive unit miles.

Basis Employed in Assignment of Expenses and Statistics to Operating Divisions of
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM
In Territory I (Mountain-Pacific)

Line Number of Sheet 2 of Response to Commission's Cost Orders	Los Angeles Division	Valley Division	San Francisco Terminal
31	Part direct, part allocated on Accts. 202-273 incl.	Part direct, part allocated on Accts. 202-273 incl.	Part direct, part allocated on Accts. 202-273 incl.
32	Part direct, part allocated on Acct. 394, yard switching locomotive hours, transportation service train hours and Accts. 202-273 incl.	Part direct, part allocated on Accts. 394, yard switching locomotive hours, transportation service train hours and Accts. 202-273 incl.	Part direct, part allocated on Accts. 394, yard switching locomotive hours, transportation service train hours and Accts. 202-273 incl.
33	Part direct, part allocated on Accts. 202-273 incl.	Part direct, part allocated on Accts. 202-273 incl.	Part direct, part allocated on Accts. 202-273 incl.
34	Part direct, part allocated on Accts. 202-221 incl.	Part direct, part allocated on Accts. 202-221 incl.	Part direct, part allocated on Accts. 202-221 incl.

[fol. 837]

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Basis Employed in Assignment of Expenses and Statistics to Operating Divisions of
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM
In Territory I (Mountain-Pacific)

Line Number of Sheet 3 of Response to Commission's Cost Orders	Los Angeles Division	Valley Division	San Francisco Terminal
1	Part direct, part allocated on total transportation accounts omitting Accts. 390, 391, 407, 410 to 413.	Part direct, part allocated on total transportation accounts omitting Accts. 390, 391, 407, 410 to 413.	Part direct, part allocated on total transportation accounts omitting Accts. 390, 391, 407, 410 to 413.
2	Wholly allocated on transportation service train hours.	Wholly allocated on transportation service train hours.	None
3	Part direct, part allocated on direct charges.	Part direct, part allocated on direct charges.	Part direct, part allocated on direct charges.
4	Part direct, part allocated on direct charges.	Part direct, part allocated on direct charges.	Part direct, part allocated on direct charges.
5	Wholly allocated on freight car miles.	Wholly allocated on freight car miles.	None
6	None	None	None
7	Part direct, part allocated on direct charges.	Part direct, part allocated on direct charges.	Part direct, part allocated on direct charges.

[fol. 839]

705

[fol. 8411]

Line Number of Sheet 3 of Response to Commission's Cost Orders	Los Angeles Division	Valley Division	San Francisco Terminal
8	Part direct, part allocated on yard switching locomotive hours.	Part direct, part allocated on yard switching locomotive hours.	Part direct, part allocated on yard switching locomotive hours.
9	Part direct, part allocated on yard switching locomotive hours.	Part direct, part allocated on yard switching locomotive hours.	Part direct, part allocated on yard switching locomotive hours.
10	Part direct, part allocated on yard switching locomotive hours.	Part direct, part allocated on yard switching locomotive hours.	Part direct, part allocated on yard switching locomotive hours.
11	Part direct, part allocated on yard switching locomotive hours.	Part direct, part allocated on yard switching locomotive hours.	Part direct, part allocated on yard switching locomotive hours.
12	Part direct, part allocated on yard switching locomotive hours.	Part direct, part allocated on yard switching locomotive hours.	Part direct, part allocated on yard switching locomotive hours.

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Basis Employed in Assignment of Expenses and Statistics to operating Divisions of
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM
In Territory I (Mountain-Pacific)

Line Number of Sheet 3 of Response to Commission's Cost Orders	Los Angeles Division	Valley Division	San Francisco Terminal
13	Part direct, part allocated on yard switching locomotive hours.	Part direct, part allocated on yard switching locomotive hours.	Part direct, part allocated on yard switching locomotive hours.
14	None	None	None
15	None	None	None
16	Wholly allocated on equated net tons of fuel and yard switching locomotive hours.	Wholly allocated on equated net tons of fuel and yard switching locomotive hours.	Wholly allocated on equated net tons of fuel and yard switching locomotive hours.
17	Wholly allocated on yard switching locomotive miles.	Wholly allocated on yard switching locomotive miles.	Wholly allocated on yard switching locomotive miles.
18	Wholly allocated on yard switching locomotive miles.	Wholly allocated on yard switching locomotive miles.	Wholly allocated on yard switching locomotive miles.
19	Part direct, part allocated on weighted engine handlings and yard switching locomotive hours.	Part direct, part allocated on weighted engine handlings and yard switching locomotive hours.	Part direct, part allocated on weighted ergine handlings and yard switching locomotive hours.

[fol. 843]
604

[fol. 845]

Line Number of Sheet 3 of Response to Commission's Cost Orders	Los Angeles Division	Valley Division	San Francisco Terminal
20	Part direct, part allocated on yard switching locomotive hours.	Part direct, part allocated on yard switching locomotive hours.	Part direct, part allocated on yard switching locomotive hours.
21	Part direct, part allocated on yard switching locomotive hours, transportation service train hours and Accts. 372-389 incl.	Part direct, part allocated on yard switching locomotive hours, transportation service train hours and Accts. 372-389 incl.	Part direct, part allocated on yard switching locomotive hours, transportation service train hours and Accts. 372-389 incl.
22	Part direct, part allocated on Accts. 377-389 incl.	Part direct, part allocated on Accts. 377-389 incl.	Part direct, part allocated on Accts. 377-389 incl.
23	Part direct, part allocated on locomotive miles.	Part direct, part allocated on locomotive miles.	None
24	Part direct, part allocated on locomotive miles.	Part direct, part allocated on locomotive miles.	None
25	Part direct, part allocated on locomotive miles and on locomotive unit miles.	Part direct, part allocated on locomotive miles and on locomotive unit miles.	None

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Basis Employed in Assignment of Expenses and Statistics to Operating Divisions of
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM
In Territory I (Mountain-Pacific)

Line Number of Sheet 3 of Response to Commission's Cost Orders	Pecos Division	New Mexico Division	Albuquerque Division
26	None	None	None
27	None	None	None
28	Wholly allocated on equated net tons of fuel.	Wholly allocated on equated net tons of fuel.	Wholly allocated on equated net tons of fuel.
29	Wholly allocated on transportation locomotive miles and locomotive unit miles.	Wholly allocated on transportation locomotive miles and locomotive unit miles.	Wholly allocated on transportation locomotive miles and locomotive unit miles.
30	Wholly allocated on transportation locomotive miles and locomotive unit miles.	Wholly allocated on transportation locomotive miles and locomotive unit miles.	Wholly allocated on transportation locomotive miles and locomotive unit miles.
31	Part direct, part allocated on weighted engine handlings. Terminals serving two divisions are charged to division in control.	Part direct, part allocated on weighted engine handlings. Terminals serving two divisions are charged to division in control.	Part direct, part allocated on weighted engine handlings.
32	Part direct, part allocated on train miles.	Part direct, part allocated on train miles.	Part direct, part allocated on train miles.
33	Part direct, part allocated on car miles.	Part direct, part allocated on car miles.	Part direct, part allocated on car miles.

712
[fol. 846]

714
[fol. 848]

Line Number of Sheet 3 of Response to Commission's Cost Orders	Pecos Division	New Mexico Division	Albuquerque Division
34	Part direct, part allocated on transportation service train hours. Terminals serving two divisions are charged to division in control.	Part direct, part allocated on transportation service train hours. Terminals serving two divisions are charged to division in control.	Part direct, part allocated on transportation service train hours.
35	Part direct, part allocated on transportation service train hours. Terminals serving two divisions are charged to division in control.	Part direct, part allocated on transportation service train hours. Terminals serving two divisions are charged to division in control.	Part direct, part allocated on transportation service train hours.
36	Part direct, part allocated on train hours.	Part direct, part allocated on train hours.	Part direct, part allocated on train hours.
37	Part direct, part allocated on Accts. 201, 301, 351, 371 and 372.	Part direct, part allocated on Accts. 201, 301, 351, 371 and 372.	Part direct, part allocated on Accts. 201, 301, 351, 371 and 372.
38	None	None	None
39	None	None	None
40	Part direct, part allocated on Acct. 371.	Part direct, part allocated on Acct. 371.	Part direct, part allocated on Acct. 371.
41	Part direct, part allocated on Acct. 371.	Part direct, part allocated on Acct. 371.	Part direct, part allocated on Acct. 371

Basis Employed in Assignment of Expenses and Statistics to Operating Divisions of
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM
In Territory I (Mountain-Pacific)

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Line Number of Sheet 3 of Response to Commission's Cost Orders	Pecos Division	New Mexico Division	Albuquerque Division
42	Part direct, part allocated on transportation service train hours and Accts. 392-402 incl.	Part direct, part allocated on transportation service train hours and Accts. 392-402 incl.	Part direct, part allocated on transportation service train hours and Accts. 392-402 incl.
43	Part direct, part allocated on Accts. 392-402 incl.	Part direct, part allocated on Accts. 392-402 incl.	Part direct, part allocated on Accts. 392-402 incl.
44	Part direct, part allocated on Acct. 371.	Part direct, part allocated on Acct. 371.	Part direct, part allocated on Acct. 371.
45	Part direct, part allocated on direct charges.	Part direct, part allocated on direct charges.	Part direct, part allocated on direct charges.
46	Part direct, part allocated on direct charges.	Part direct, part allocated on direct charges.	Part direct, part allocated on direct charges.
47	Part direct, part allocated on direct charges.	Part direct, part allocated on direct charges.	Part direct, part allocated on direct charges.
48	Part direct, part allocated on freight car miles.	Part direct, part allocated on freight car miles.	Part direct, part allocated on freight car miles.
49	Part direct, part allocated on direct charges.	Part direct, part allocated on direct charges.	Part direct, part allocated on direct charges.

Basis Employed in Assignment of Expenses and Statistics to Operating Divisions of THE ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM In Territory I (Mountain-Pacific)

718
[fol. 852]

Line Number of Sheet 4 of Response to Commission's Cost Orders	Pecos Division	New Mexico Division	Albuquerque Division
1	Wholly direct	Wholly direct	Wholly direct
2	" "	" "	" "
3	" "	" "	" "
4	Part direct, part allocated on equated track miles and switching locomotive hours. Terminals serving two divisions charged to division in control.	Part direct, part allocated on equated track miles and switching locomotive hours. Terminals serving two divisions charged to division in control.	Part direct, part allocated on equated track miles and switching locomotive hours.
5	Part direct, part allocated on equated track miles and preponderant use. Terminals serving two divisions charged to division in control.	Part direct, part allocated on equated track miles and preponderant use. Terminals serving two divisions charged to division in control.	Part direct, part allocated on equated track miles and preponderant use.
6	Part direct, part allocated on equated track miles and gross ton miles of cars, contents and locomotives. Terminals serving two divisions charged to division in control.	Part direct, part allocated on equated track miles and gross ton miles of cars, contents and locomotives. Terminals serving two divisions charged to division in control.	Part direct, part allocated on equated track miles and gross ton miles of cars, contents and locomotives.

[fol. 847]

Line Number of Sheet 3 of Response to Commission's Cost Orders	Los Angeles Division	Valley Division	San Francisco Terminal
26	None	None	None
27	None	None	None
28	Wholly allocated on equated net tons of fuel.	Wholly allocated on equated net tons of fuel.	None
29	Wholly allocated on transportation locomotive miles and locomotive unit miles.	Wholly allocated on transportation locomotive miles and locomotive unit miles.	None
30	Wholly allocated on transportation locomotive miles and locomotive unit miles.	Wholly allocated on transportation locomotive miles and locomotive unit miles.	None
31	Part direct, part allocated on weighted engine handlings.	Part direct, part allocated on weighted engine handlings.	None
32	Part direct, part allocated on train miles.	Part direct, part allocated on train miles.	None
33	Part direct, part allocated on car miles.	Part direct, part allocated on car miles.	None

Basis Employed in Assignment of Expenses and Statistics to Operating Divisions of
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM
In Territory I (Mountain-Pacific)

Line Number of Sheet 3 of Response to Commission's Cost Orders	Los Angeles Division	Valley Division	San Francisco Terminal
34	Part direct, part allocated on transportation service train hours.	Part direct, part allocated on transportation service train hours.	Part direct, part allocated on transportation service train hours.
35	Part direct, part allocated on transportation service train hours.	Part direct, part allocated on transportation service train hours.	Part direct, part allocated on transportation service train hours.
36	Part direct, part allocated on train hours.	Part direct, part allocated on train hours.	None
37	Part direct, part allocated on Accts. 201, 301, 351, 371 and 372.	Part direct, part allocated on Accts. 201, 301, 351, 371 and 372.	Part direct, part allocated on Accts. 201, 301, 351, 371 and 372.
38	None	None	Wholly direct
39	None	None	None
40	Part direct, part allocated on Acct. 371.	Part direct, part allocated on Acct. 371.	Part direct, part allocated on Acct. 371.
41	Part direct, part allocated on Acct. 371.	Part direct, part allocated on Acct. 371.	Part direct, part allocated on Acct. 371.

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Basis Employed In Assignment of Expenses and Statistics to Operating Divisions of
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM
In Territory I (Mountain-Pacific)

Line Number of Sheet 3 of Response to Commission's Cost Orders	Los Angeles Division	Valley Division	San Francisco Terminal
42	Part direct, part allocated on transportation service train hours and Accts. 392-402 incl.	Part direct, part allocated on transportation service train hours and Accts. 392-402 incl.	Part direct, part allocated on transportation service train hours and Accts. 392-402 incl.
43	Part direct, part allocated on Accts. 392-402 incl.	Part direct, part allocated on Accts. 392-402 incl.	Part direct, part allocated on Accts. 392-402 incl.
44	Part direct, part allocated on Acct. 371.	Part direct, part allocated on Acct. 371.	Part direct, part allocated On Acct. 371.
45	Part direct, part allocated on direct charges.	Part direct, part allocated on direct charges.	Part direct, part allocated on direct charges.
46	Part direct, part allocated on direct charges.	Part direct, part allocated on direct charges.	Part direct, part allocated on direct charges.
47	Part direct, part allocated on direct charges.	Part direct, part allocated on direct charges.	Part direct, part allocated on direct charges.
48	Part direct, part allocated on freight car miles.	Part direct, part allocated on freight car miles.	Part direct, part allocated on freight car miles.
49	Part direct, part allocated on direct charges.	Part direct, part allocated on direct charges.	Part direct, part allocated on direct charges.

[fol. 851]

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Basis Employed in Assignment of Expenses and Statistics to Operating Divisions of
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM
In Territory 4 (Mountain-Pacific)

Line Number of Sheet 4 of Response to Commission's Cost Orders	Los Angeles Division	Valley Division	San Francisco Terminal
1	Wholly direct	Wholly direct	Wholly direct
2	" "	" "	" "
3	" "	" "	" "
4	Part direct part allocated on equated track miles and switching locomotive hours.	Part direct, part allocated on equated track miles and switching locomotive hours.	Part direct, part allocated on equated track miles and switching locomotive hours.
5	Part direct, part allocated on equated track miles and preponderant use.	Part direct, part allocated on equated track miles and preponderant use.	Part direct, part allocated on equated track miles and preponderant use.
6	Part direct, part allocated on equated track miles and gross ton miles of cars, contents and locomotives.	Part direct, part allocated on equated track miles and gross ton miles of cars, contents and locomotives.	Part direct, part allocated on equated track miles and gross ton miles of cars, contents and locomotives.

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Line Number of Sheet 4 of Response to Commission's Cost Orders	Pecos Division	New Mexico Division	Albuquerque Division
7	Part direct, part allocated on Accts. 202-221 incl. Terminals serving two divisions charged to division in control.	Part direct, part allocated on Accts. 202-221 incl. Terminals serving two divisions charged to division in control.	Part direct, part allocated on Accts. 202-221 incl.
8	Part direct, part allocated on Accts. 202-273 incl. Terminals serving two divisions charged to division in control.	Part direct, part allocated on Accts. 202-273 incl. Terminals serving two divisions charged to division in control.	Part direct, part allocated on Accts. 202-273 incl.
9	Part direct, part allocated on Accts. 308, 311, 314, 317, 323, 388 and 400. Terminals serving two divisions charged to division in control.	Part direct, part allocated on Accts. 308, 311, 314, 317, 323, 388 and 400. Terminals serving two divisions charged to division in control.	Part direct, part allocated on Accts. 308, 311, 314, 317, 323, 388 and 400.
10	Part direct, part allocated on Accts. 202-273 incl. Terminals serving two divisions charged to division in control.	Part direct, part allocated on Accts. 202-273 incl. Terminals serving two divisions charged to division in control.	Part direct, part allocated on Accts. 202-273 incl.
11	Part direct, part allocated on cars handled.	Part direct, part allocated on cars handled.	Part direct, part allocated on cars handled.
12	Part direct, part allocated on Accts. 202-273 incl.	Part direct, part allocated on Accts. 202-273 incl.	Part direct, part allocated on Accts. 202-273 incl.

Basis Employed in Assignment of Expenses and Statistics to Operating Divisions of
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM
In Territory I (Mountain-Pacific)

Line Number of Sheet 4 of Response to Commission's Cost Orders	Pecos Division	New Mexico Division	Albuquerque Division
13	Part direct, part allocated on yard switching locomotive hours. Terminals serving two divisions charged to division in control.	Part direct, part allocated on yard switching locomotive hours. Terminals serving two divisions charged to division in control.	Part direct, part allocated on yard switching locomotive hours.
14	Wholly allocated on equated net tons of fuel and yard switching locomotive hours.	Wholly allocated on equated net tons of fuel and yard switching locomotive hours.	Wholly allocated on equated net tons of fuel and yard switching locomotive hours.
15	Part direct, part allocated on locomotive miles and locomotive unit miles.	Part direct, part allocated on locomotive miles and locomotive unit miles.	Part direct, part allocated on locomotive miles and locomotive unit miles.
16	Wholly allocated on equated net tons of fuel.	Wholly allocated on equated net tons of fuel.	Wholly allocated on equated net tons of fuel.
17	..... Developed by Special Study		
18	..... Developed by Special Study		
19	..... Not compiled by Operating Divisions.	Developed by Special Study	
20	..... Not compiled by Operating Divisions.	Developed by Special Study	
21	..... Not compiled by Operating Divisions.	Developed by Special Study	
22	..... Not compiled by Operating Divisions.	Developed by Special Study	

Basis Employed in Assignment of Expenses and Statistics to Operating Divisions of
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM
In Territory I (Mountain-Pacific)

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Line Number of Sheet 4 of Response to Commission's Cost Orders	Pecos Division	New Mexico Division	Albuquerque Division
23	..... Not compiled by Operating Divisions.	Developed by Special Study	
24	..... Not compiled by Operating Divisions.	Developed by Special Study	
25	..... Not compiled by Operating Divisions.	Developed by Special Study	
26	Wholly direct	Wholly direct	Wholly direct
27	Wholly direct	Wholly direct	Wholly direct
28	Wholly direct	Wholly direct	Wholly direct
29	Wholly direct	Wholly direct	Wholly direct
30	Wholly direct	Wholly direct	Wholly direct

Line Number of Sheet 1 of Response to Commission's Cost Orders	Bases Employed by the Union Pacific Railroad Company in Preparing Data for Territory I (Mountain-Pacific)
1	Directly assigned, using statistics available by operating divisions
2	Directly assigned, using statistics available by operating divisions, except for proration of "B" units on basis of mileage of lead units
3	Same as line 1
4	Same as line 2
5	Same as line 1
6	Same as line 2
7	Same as line 1
8	Same as line 1
9	Partly direct, partly prorated on the basis of locomotive-miles
10	Directly assigned, using statistics available by operating divisions

Line Number of Sheet 4 of Responses to Commission's Cost Orders	Bases Employed by the Union Pacific Railroad Company
3	Directly assigned, using statistics available by operating divisions
17	do
18	do
19	do
20	do
21	do
22	do
23	do
24	do
25	do
27	do
28	do
29	do
30	do

Basis Employed in Assignment of Expenses and Statistics to Operating Divisions of
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM
In Territory I (Mountain-Pacific)

Line Number of Sheet 4 of Response to Commission's Cost Orders	Los Angeles Division	Valley Division	San Francisco Terminal
7	Part direct, part allocated on Accts. 202-221 incl.	Part direct, part allocated on Accts. 202-221 incl.	Part direct, part allocated on Accts. 202-221 incl.
8	Part direct, part allocated on Accts. 202-273 incl.	Part direct, part allocated on Accts. 202-273 incl.	Part direct, part allocated on Accts. 202-273 incl.
9	Part direct, part allocated on Accts. 308, 311, 314, 317, 323, 388 and 400.	Part direct, part allocated on Accts. 308, 311, 314, 317, 323, 388 and 400.	Part direct, part allocated on Accts. 308, 311, 314, 317, 323, 388 and 400.
10	Part direct, part allocated on Accts. 202-273 incl.	Part direct, part allocated on Accts. 202-273 incl.	Part direct, part allocated on Accts. 202-273 incl.
11	Part direct, part allocated on cars handled.	Part direct, part allocated on cars handled.	Part direct, part allocated on cars handled.
12	Part direct, part allocated on Accts. 202-273 incl.	Part direct, part allocated on Accts. 202-273 incl.	Part direct, part allocated on Accts. 202-273 incl.

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[fol. 857]

Line Number of Sheet 4 of Response to Commission's Cost Orders	Los Angeles Division	Valley Division	San Francisco Terminal
13	Part direct, part allocated on yard switching locomotive hours.	Part direct, part allocated on yard, switching locomotive hours.	Part direct, part allocated on yard switching locomotive hours.
14	Wholly allocated on equated net tons of fuel and yard switching locomotive hours.	Wholly allocated on equated net tons of fuel and yard switching locomotive hours.	Wholly allocated on equated net tons of fuel and yard switching locomotive hours.
15	Part direct, part allocated on locomotive miles and locomotive unit miles.	Part direct, part allocated on locomotive miles and locomotive unit miles.	None
16	Wholly allocated on equated net tons of fuel.	Wholly allocated on equated net tons of fuel.	None
17	..... Developed by Special Study		
18	..... Developed by Special Study		
19	.....Not compiled by Operating Divisions. Developed by Special Study		
20	.....Not compiled by Operating Divisions. Developed by Special Study		
21	.....Not compiled by Operating Divisions. Developed by Special Study		
22	.....Not compiled by Operating Divisions. Developed by Special Study		

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Basis Employed in Assignment of Expenses and Statistics to Operating Divisions of
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM
In Territory I (Mountain-Pacific)

Line Number of Sheet 4 of Response to Commission's Cost Orders	Los Angeles Division	Valley Division	San Francisco Terminal
23	..... Not compiled by Operating Divisions.	Developed by Special Study	.....
24	..... Not compiled by Operating Divisions.	Developed by Special Study	
25	..... Not compiled by Operating Divisions.	Developed by Special Study	
26	Wholly direct	Wholly direct	Wholly direct
27	Wholly direct	Wholly direct	None
28	Wholly direct	Wholly direct	None
29	Wholly direct	Wholly direct	None
30	Wholly direct	Wholly direct	None

[fol. 861]

Line Number of Sheet 1 of Response to Commission's Cost Orders	Bases Employed by the Union Pacific Railroad Company
11	Partly direct, partly prorated on basis of operated road miles
12	Directly assigned, using statistics maintained by operating districts
13	do
14	do
15	do
16	do
17	do
18	do
19	do

Line Number of Sheet 4 of Responses to Commission's Cost Orders	
1	Directly assigned, using statistics available by operating divisions
2	do

FREIGHT RATES ON COAL FROM CASTLE GATE-KINGMINE, UTAH DISTRICT TO UTAH DESTINATIONS, SHOWING INCREASES AUTHORIZED BY PUBLIC SERVICE COMMISSION OF UTAH BY ORDER DATED MARCH 16, 1953; ALSO SHOWING INCREASES APPLIED FOR IN THIS PROCEEDING

	Salt Lake City, Utah		Orem, Utah		Brigham City, Utah		Logan, Utah		Milford, Utah	
	Other Than Slack	Slack	Other Than Slack	Slack	Other Than Slack	Slack	Other Than Slack	Slack	Other Than Slack	Slack
Freight Rates in Effect April 30, 1953	$2.35	$1.95	$2.15	$1.75	$2.65	$2.15	$3.00	$2.15	$3.80	$3.50
13th Section increases authorized by Public Service Commission of Utah, effective May 1, 1953	.46	.38	.44	.32	.44	.44	.46	.44	.52	.50
Freight Rates now in Effect	$2.81	$2.33	$2.59	$2.07	$3.29	$2.59	$3.46	$2.59	$4.32	$4.00
If Ex Parte 175 increases applied for in this proceeding are granted, rates will be increased by -	.34	.28	.31	.25	.39	.31	.40	.31	.40	.40
Resulting rates will be -	$3.15	$2.61	$2.90	$2.32	$3.68	$2.90	$3.86	$2.90	$4.72	$4.40

STATEMENT SHOWING COMPARISON OF EFFECTIVE UTAH INTRASTATE COAL RATES INCLUDING INCREASES AUTHORIZED BY PUBLIC SERVICE COMMISSION OF UTAH: WITH INTERSTATE RATES INCLUDING ALL AUTHORIZED INTERSTATE INCREASES AND INTRASTATE RATES IN EFFECT IN CERTAIN PACIFIC STATES WHICH ALSO INCLUDE THE INTERSTATE INCREASES AUTHORIZED BY THE RESPECTIVE STATE COMMISSIONS

-1-	-2-	-3-	-4-	-5- Rates		-6-	-7- Ton Mile Earnings		-8-	-9-	-10-
Line No.	Origin	Destination	Routing	Distance	Other than Slack	Slack	Other than Slack	Slack		Tariff References Rates	Distance
1	Castle Gate, Utah	Milford, Utah	D&RGW-UP	246.9	$4.32	$4.00	$.01749	$.01620		D&RGW ICC 743	D&RGW ICC 623 & UP ICC 5113
2	Castle Gate, Utah	Preston, Idaho	D&RGW-UP	253.9	3.86	3.02	.01520	.01189		D&RGW ICC 907	D&RGW ICC 623 & UP ICC 5113
3	Castle Gate, Utah	Lund, Utah	D&RGW-UP	281.9	4.64	4.32	.01645	.01532		D&RGW ICC 743	D&RGW ICC 623 & UP ICC 5113
4	Castle Gate, Utah	Pocatello, Ida.	D&RGW-UP	288.9	4.50	4.23	.01557	.01464		D&RGW ICC 907	D&RGW ICC 623 & UP ICC 5113
5	Castle Gate, Utah	Provo, Utah	D&RGW	70.9	2.59	1.90	.03653	.02679		D&RGW ICC 960	D&RGW ICC 623
6	Bear Creek, Mont.	Billings, Mont.	MWAS-MP	63.8	2.82	1.456	.04420	.02282		MP ICC 9760	MP ICC 9759
7	Waldo, N. M.	Belen, N. M.	AT&SF	79.0	$2.33*1.94	1.43	$.02949*.02455	.01810		AT&SF ICC 14170	AT&SF ICC 14399
8	Castle Gate, Utah	Fillmore, Utah	D&RGW-UP	206.9	4.00	3.67	.01933	.01773		D&RGW ICC 743	D&RGW ICC 623 & UP ICC 5113
9	Armington, Mont.	Anaconda, Mont.	GN-BAAP	225.1	3.51	2.89	.01559	.01283		GN ICC A-5869	GN ICC A-6710 & UP ICC 5113
10	Roslyn, Wash.	Riparia, Wash.	NP	219.4	3.76	3.47	.01713*	.01581		W. R. Watson, Agent ICC 847	NP ICC 9759
11	Castle Gate, Utah	Milford, Utah	D&RGW-UP	246.9	4.32	4.00	.01749	.01620		D&RGW ICC 743	D&RGW ICC 623 & UP ICC 5113
12	Kirby, Wyo.	Wendover, Wyo.	CBAQ-OAS	244.8	3.67	2.46	.01499	.01005		W. J. Christie, Agent ICC 30	CBAQ ICC 20147
13	Castle Gate, Utah	Lund, Utah	D&RGW-UP	281.9	4.64	4.32	.01645	.01532		D&RGW ICC 743	D&RGW ICC 623 & UP ICC 5113
14	Bear Creek, Mont.	Butte, Mont.	MWAS-MP	269.6	4.07	3.70	.01509	.01372		MP ICC 9760	MP ICC 9759
15	Rock Springs, Wyo.	Cheyenne, Wyo.	UP	293.0	4.10	2.97	.01399	.01014		W. J. Christie, Agent ICC 30	UP ICC 5113
16	Waldo, N. M.	Deming, N. M.	AT&SF	280.0	3.63	3.13	.01368	.01116		AT&SF ICC 14170	AT&SF ICC 14399

*Applies on rail coal only.

COMPARISON OF UTAH INTRASTATE COAL RATES FROM CASTLE GATE, UTAH GROUP, WITH INTERSTATE RATES FROM THE ROCK SPRINGS-KEMMERER, WYOMING GROUPS, TO UTAH DESTINATIONS SHOWN

Line No.		Distance in Miles	1-A Slack Freight Rate	1-B Ton Mile Earnings	2-A Slack Freight Rate	2-B Ton Mile Earnings	3-A Slack Freight Rate	3-B Ton Mile Earnings
1	Castle Gate to Dovil Slide	183.7	$2.97	$.016167	$2.97	$.016167	$3.33	$.018127
2	Rock Springs to Dovil Slide	159.0	* 1.68	.010566	* 1.68	.010566	* 1.68	.010566
3	Castle Gate to Ogden	151.7	2.33	.015359	2.33	.015359	2.61	.017205
4	Rock Springs to Ogden	191.0	2.33	.012198	2.61	.013664	2.61	.013664
5	Castle Gate to Bushnell	170.7	2.59	.015172	2.59	.015172	2.90	.016988
6	Rock Springs to Bushnell	210.0	2.59	.012333	2.90	.013809	2.90	.013809

1-A and 1-B: Present Utah rate compared with Wyoming interstate rate, excluding from said interstate rate the Ex Parte 175 increases.

2-A and 2-B: Present Utah rate compared with Wyoming interstate rate, including in said interstate rate the Ex Parte 175 increases.

3-A and 3-B: Utah rate which would prevail should this petition be granted, compared with the Wyoming interstate rate including the Ex Parte 175 increases.

*Published in Supp. No. 135 to W. J. Christie, Agent, ICC No. 30, effective November 16, 1953.

625

MATTHEW BENDER & COMPANY
MB
57
MICRO CARD
TRADE MARK ®

FREIGHT RATE CHANGES IN SLACK COAL RATE FROM
BOWIE, COLORADO DISTRICT TO IRONTON-GENEVA, UTAH

	Slack coal rate Bowie, Colorado, to Ironton-Geneva, Utah Per Ton	Increases authorized in Ex Parte 175 Per Ton	Slack coal rates, including Ex Parte 175 increases Per Ton
Rates in effect December 5, 1943	$2.35		
Increases authorized in Ex Parte 162, 166, 168	.94		
Rate in effect September 1, 1949, Special Supplement 34 to D&RGW Tariff 5904-I, I.C.C. 766	$3.29		
X-175 interim increase of 2%, maximum 6¢ per ton, effective April 4, 1951, Special Supplement 40 to D&RGW Tariff 5904-I, I.C.C. 766		$.06	$3.35
X-175 interim increase of 6%, maximum 20¢ per ton, effective August 28, 1951, Special Supplement 40 to D&RGW Tariff 5904-I, I.C.C. 766 (cancels previous 6¢ per ton increase)		$.20	$3.49
X-175 increase of 12%, maximum 40¢ per ton, effective May 2, 1952, Special Supplement 40 to D&RGW Tariff 5904-I, I.C.C. 766 (cancels previous 6% increase)		$.39	$3.68
Rates published in Supplement 51 to D&RGW Tariff 5904-I, effective May 20, 1953	$2.90	$.35	$3.25

BEFORE THE

INTERSTATE COMMERCE COMMISSION

COMPARISON OF RATES FROM SALT LAKE CITY TO VARIOUS DESTINATIONS IN THE SALT LAKE CITY TRADE AREA FOR COMPARABLE DISTANCES ON INTRASTATE AND INTERSTATE MOVEMENTS. THE INTERSTATE RATES INCLUDE THE EX PARTE 175 INCREASE OF 15%

COLUMNS:	(1)	(2)	(3)	(4)
LINE NO.	FROM	TO	RAIL DISTANCE (MILES)	RATE (CENTS PER 100 LBS.)
	I - PAINT, NOIBN, IN CANS, IN BOXES, L.C.L.			
1.	Salt Lake City, Utah	Price, Utah	126	85
2.	Salt Lake City, Utah	Thompson, Utah	217	147
3.	Salt Lake City, Utah	Delta, Utah	135	93
4.	Salt Lake City, Utah	Pocatello, Idaho	170	90
5.	Salt Lake City, Utah	Idaho Falls, Idaho	221	106
6.	Salt Lake City, Utah	Rock Springs, Wyoming	227	105
	II - REFRIGERATORS, IN BOXES, L.C.L.			
7.	Salt Lake City, Utah	Price, Utah	126	124
8.	Salt Lake City, Utah	Thompson, Utah	217	220
9.	Salt Lake City, Utah	Delta, Utah	135	117
10.	Salt Lake City, Utah	Pocatello, Idaho	170	125
11.	Salt Lake City, Utah	Idaho Falls, Idaho	221	152
12.	Salt Lake City, Utah	Rock Springs, Wyoming	227	141
	III - RADIOS AND TELEVISION SETS, IN BOXES, L.C.L.			
13.	Salt Lake City, Utah	Price, Utah	126	140
14.	Salt Lake City, Utah	Thompson, Utah	217	254
15.	Salt Lake City, Utah	Delta, Utah	135	117
16.	Salt Lake City, Utah	Pocatello, Idaho	170	90

STATEMENT SHOWING COMPARISON OF FREIGHT RATE INCREASES ON COAL TO INTERSTATE DESTINATIONS COMPARED WITH PROPOSED OF FREIGHT RATE INCREASES ON COAL TO INTRASTATE DESTINATIONS.

STATEMENT SHOWING PERCENTAGES OF COAL FREIGHT RATE INCREASES AUTHORIZED BY INTERSTATE COMMERCE COMMISSION IN EX PARTE 162, 166, 168 AND 175, ON COAL FROM CASTLE GATE, UTAH GROUP TO POINTS SHOWN

Line No.		-1- Boise, Idaho			-2- Portland, Oregon			-3- Spokane, Washington			-4- Seattle, Washington		
		Rates in cents per ton of 2000 pounds											
		Lump	Nut	Slack	Lump	Nut	Slack	Lump	Nut	Slack	Lump	Nut	Slack
1	Freight rates in effect Dec. 31, 1946	$4.50	$4.30	$3.60	$5.20	$5.00	$4.75	$5.00	$5.00	$4.75	$5.40	$5.20	$4.95
2	Total increases authorized	1.45	1.45	1.45	1.45	1.45	1.45	1.45	1.45	1.45	1.45	1.45	1.45
3	Percent increase Line 2 over Line 1	32.22%	33.72%	38.16%	27.88%	29.00%	30.53%	29.00%	29.00%	30.53%	26.85%	27.88%	29.29%

STATEMENT SHOWING PERCENTAGES OF COAL FREIGHT RATE INCREASES AUTHORIZED BY PUBLIC SERVICE COMMISSION OF UTAH AND PERCENTAGES OF TOTAL INCREASES SINCE FEBRUARY 24, 1947, WHICH WOULD RESULT FROM GRANTING CARRIERS' PETITION IN THIS PROCEEDING, AS TO COAL SHIPMENTS ORIGINATING AT CASTLE GATE, UTAH GROUP DESTINED TO POINTS SHOWN

Line No.		-5- Salt Lake City, Utah		-6- Ogden, Utah		-7- Logan, Utah	
		Rates in cents per ton of 2000 pounds.					
		Other than Slack	Slack	Other than Slack	Slack	Other than Slack	Slack
4	Tariff rates effective December 31, 1946	$1.95	$1.55	$1.75	$1.35	$2.50	$1.75
5	Total increases authorized by Public Service Commission of Utah	.66	.76	.64	.72	.96	.84
6	Full Ex Parte 175 increases sought to be applied under this proceeding	.34	.26	.31	.25	.40	.31
7	Total of increases authorized by Public Service Commission of Utah and sought in this proceeding (Sum of Lines 5 and 6)	1.20	1.06	1.15	.97	1.36	1.15
8	Percent increase Line 5 over Line 4	44.10%	50.32%	46.00%	53.33%	38.40%	46.00%
9	Percent increase Line 7 over Line 4	61.54%	68.39%	65.71%	71.85%	54.40%	65.71%

EFFECT RATE CHANGES IN BLACK COAL RATE FROM PALISADE, COLORADO DISTRICT TO IRONTON-GENEVA, UTAH

	Black coal rate Palisade, Colorado, to Ironton-Geneva, Utah Per Ton	Increases authorized in Ex Parte 175 Per Ton	Black coal rates including Ex Parte 175 increases Per Ton
Rates in effect December 5, 1943	$2.10		
Increases authorized in Ex Parte 162, 166, 168	.87		
Rates in effect September 1, 1949, Special Supplement 34 to D&RGW Tariff 5904-I, I.C.C. 766	$2.97		
X-175 interim increase of 2%, maximum 6¢ per ton, effective April 4, 1951, Special Supplement 40 to D&RGW Tariff 5904-I, I.C.C. 766		$.06	$3.03
X-175 interim increase of 6%, maximum 20¢ per ton, effective August 28, 1951, Special Supplement 40 to D&RGW Tariff 5904-I, I.C.C. 766 (cancels previous 6¢ per ton increase)		$.18	$3.15
X-175 increase of 12%, maximum 40¢ per ton, effective May 2, 1952, Special Supplement 40 to D&RGW Tariff 5904-I, I.C.C. 766 (cancels previous 6% increase)		$.36	$3.33
Rates published in Supplement 51 to D&RGW Tariff 5904-I, effective May 20, 1953	$2.65	$.32	$2.97

BEFORE THE

INTERSTATE COMMERCE COMMISSION

STATEMENT SHOWING COMPARISON OF RATES AND REVENUES APPLICABLE TO IRON AND STEEL BARS, PLATES, SHAPES AND SHEETS FROM VARIOUS STEEL PRODUCING ORIGINS FOR COMPARABLE DISTANCES.

COLUMNS: (1)		(2)	(3)	(4)	(5)	(6)	(7)	(8)
						REVENUE PER		
LINE NO.	FROM	TO	SHORT LINE RAIL DISTANCE (MILES)	MINIMUM CARLOAD WEIGHT (LBS.)	RATE PER TON OF 2,000 (LBS.)	MINIMUM CARLOAD	CAR-MILE	TON-MILE (CENTS)
		UTAH INTRASTATE TRAFFIC - RATES NOT SUBJECT TO X-175 (15%) INCREASE						
1.	Geneva, Utah	Salt Lake City, Utah	38	40,000	$3.50	$ 70.00	$1.84	9.2
2.	Geneva, Utah	Salt Lake City, Utah	38	80,000	3.11	124.40	3.27	8.2
		CALIFORNIA INTRASTATE TRAFFIC - RATES INCLUDING X-175 (15%) INCREASE						
3.	Kaiser, Calif.	Los Angeles, Calif.	46	80,000	1.96	78.40	1.70	4.3
4.	Pittsburg, Calif.	San Francisco, Calif.	50	30,000	2.76	41.40	.83	5.5
5.	Pittsburg, Calif.	San Francisco, Calif.	50	60,000	1.96	58.80	1.18	3.9

TARIFF AUTHORITY FOR RATES

LOCAL-UTAH FREIGHT BUREAU TARIFF 1-Q, I.C.C. NO. 4, P.S.C.U. NO. 4
PACIFIC SOUTHCOAST FREIGHT BUREAU TARIFF NO. 272, I.C.C. NO. 1403

TARIFF AUTHORITY FOR DISTANCES

D. & R.G.W. DISTANCE TARIFF 5024-E, I.C.C. NO. 623, P.S.C.U. NO. 237
SOUTHERN PACIFIC COMPANY TARIFF NO. 420-D, I.C.C. NO. 4687

COLUMNS:	(1)	(2)	(3)	(4)
LINE NO.	FROM	TO	RAIL DISTANCE (MILES)	RATE (CENTS PER 100 LBS.)
		III - RADIOS AND TELEVISION SETS, IN BOXES, L.C.L., CONT.		
17.	Salt Lake City, Utah	Idaho Falls, Idaho	221	106
18.	Salt Lake City, Utah	Rock Springs, Idaho	227	105
		IV - DRUGS, NOIBN, IN BOXES, L.C.L.		
19.	Salt Lake City, Utah	Price, Utah	126	124
20.	Salt Lake City, Utah	Thompson, Utah	217	220
21.	Salt Lake City, Utah	Delta, Utah	135	117
22.	Salt Lake City, Utah	Pocatello, Idaho	170	150
23.	Salt Lake City, Utah	Idaho Falls, Idaho	221	177
24.	Salt Lake City, Utah	Rock Springs, Wyoming	227	155
		V - BUILDERS HARDWARE, IN BOXES, L.C.L.		
25.	Salt Lake City, Utah	Price, Utah	126	124
26.	Salt Lake City, Utah	Thompson, Utah	217	220
27.	Salt Lake City, Utah	Delta, Utah	135	138
28.	Salt Lake City, Utah	Pocatello, Idaho	170	125
29.	Salt Lake City, Utah	Idaho Falls, Idaho	221	152
30.	Salt Lake City, Utah	Rock Springs, Wyoming	227	141
		VI - CANNED GOODS, IN BOXES, L.C.L.		
31.	Salt Lake City, Utah	Price, Utah	126	85
32.	Salt Lake City, Utah	Thompson, Utah	217	147
33.	Salt Lake City, Utah	Delta, Utah	135	93
34.	Salt Lake City, Utah	Pocatello, Idaho	170	90
35.	Salt Lake City, Utah	Idaho Falls, Idaho	221	106
36.	Salt Lake City, Utah	Rock Springs, Wyoming	227	105

COLUMNS:	(1)	(2)	(3)	(4)
LINE NO.	FROM	TO	RAIL DISTANCE (MILES)	RATE (CENTS PER 100 LBS.)
	VII - ROOFING, COMPOSITION OR PREPARED, IN BOXES, L.C.L.			
37.	Salt Lake City, Utah	Price, Utah	126	85
38.	Salt Lake City, Utah	Thompson, Utah	217	147
39.	Salt Lake City, Utah	Delta, Utah	135	93
40.	Salt Lake City, Utah	Pocatello, Idaho	170	90
41.	Salt Lake City, Utah	Idaho Falls, Idaho	221	106
42.	Salt Lake City, Utah	Rock Springs, Wyoming	227	105
	VIII - MACHINERY AND MACHINES, NOS, L.C.L.			
43.	Salt Lake City, Utah	Price, Utah	126	124
44.	Salt Lake City, Utah	Thompson, Utah	217	220
45.	Salt Lake City, Utah	Delta, Utah	135	93
46.	Salt Lake City, Utah	Pocatello, Idaho	170	90
47.	Salt Lake City, Utah	Idaho Falls, Idaho	221	106
48.	Salt Lake City, Utah	Rock Springs, Wyoming	227	105

TARIFF AUTHORITY FOR RATES

D. & R.G.W. RR TARIFF NO. 4975-H, I.C.C. NO. 962, P.S.C.U. NO. 383
D. & R.G.W. RR TARIFF NO. 7000-A, I.C.C. NO. 699, P.S.C.U. NO. 274
UNION PACIFIC RAILROAD TARIFF NO. 4100, I.C.C. NO. 5194, P.S.C.U. NO. 731
UNION PACIFIC RAILROAD TARIFF NO. 6046-B, I.C.C. NO. 4986, P.S.C.U. NO. 157

TARIFF AUTHORITY FOR DISTANCES

D. & R.G.W. RR TARIFF NO. 5024-E, I.C.C. NO. 623, P.S.C.U. NO. 237
UNION PACIFIC RAILROAD TARIFF NO. 4000-A, I.C.C. NO. 5325, P.S.C.U. NO. 798

[fol. 867] PROTESTANTS' EXHIBIT No. 76

BAMBERGER RAILROAD COMPANY
RATE OF RETURN EARNED ON DEPRECIATED RATE BASE
YEAR 1953

INVESTMENT IN TRANSPORTATION PROPERTY LESS RESERVE FOR DEPRECIATION:		
BEGINNING OF YEAR	$ 632,918	
END OF YEAR	601,420	
	$ 1,234,338	
AVERAGE FOR YEAR		$ 617,169
MATERIAL AND SUPPLIES:		
BEGINNING OF YEAR	$ 154,495	
END OF YEAR	91,405	
	$ 245,900	
AVERAGE FOR YEAR		$ 122,950
ALLOWANCE FOR CASH WORKING CAPITAL 1/8 OF TOTAL OPERATING EXPENSES FOR YEAR, EXCLUSIVE OF DEPRECIATION EXPENSE		$ 101,373
RATE BASE		$ 841,492
RAILWAY OPERATING INCOME		$ 134,491
RATE OF RETURN ON ABOVE RATE BASE		15.98%

SOURCE OF FIGURES: 1953 ANNUAL REPORT OF BAMBERGER RAILROAD COMPANY ON FILE WITH PUBLIC SERVICE COMMISSION OF UTAH.

I. C. C. DOCKET NO. 31454

The following figures show the average revenue in mills per ton mile, received by the Class I railways in the United States as a whole, in the years shown:

1940	9.45
1941	9.35
1942	9.32
1943	9.33
1944	9.49
1945	9.59
1946	9.78
1947	10.76
1948	12.51
1949	13.39
1950	13.29
1951	13.36
1952	14.30
1953	14 78

Authority: Eastern Railroad Presidents Conference; "A Yearbook of Railroad Information-1953 edition," (Page 38) except 1953, I.C.C. Statement M-220, Bureau of Transportation Economics and Statistics.

(Same as exhibit 19 in Utah PSC Case 3669, with 1953 added)

[fol. 869] PROTESTANTS' EXHIBIT No. 78

This exhibit shows Western Cement Rates basic scale IV rates on cement, carloads, minimum weight 50,000 pounds, as increased by Ex Parte Dockets Nos. 162, 166 and 168, with revenues in mills a ton mile, and per car mile at 50 tons average, and compares these rates with those currently applicable in Texas and Idaho; also those in and between Kansas, Missouri and Oklahoma on the so-called M-K-T 290 mile truck compelled scale, and with the motor rate scale in California

Miles	Scale IV Rates Basic	Scale IV Rates Now	Revenue Now Mills Car Mi.	Revenue Now Per Car Mi.	(X) In Texas	( ) In Idaho	# M-K-T Scale	(C) Calif Truck Scale
5	10	15	600.0	$30.00	5	7½	7	5
10	11	17	340.0	17.00	"	"	8	5½
15	"	"	226.7	11.33	"	"	8½	"
20	12	18	180.0	9.00	6	"	9	"
25	"	"	144.0	7.20	7	"	9½	6½
30	"	"	120.0	6.00	8	9	10	"
35	"	"	102.9	5.14	9	"	10½	7
40	13	Ø21	Ø105.0	Ø5.25	10	11	11	7
45	"	"	93.3	4.67	11	"	11½	8
50	"	"	84.0	4.20	12	"	12	9
55	"	"	76.4	3.82	13	12	12½	9½
60	"	"	70.0	3.50	14	"	13	"
65	14	22	67.7	3.38	15	"	14	11
70	"	"	62.9	3.14	16	"	"	"
75	"	"	58.7	2.93	17	"	"	"
--	--	(292)	--	--	(153)	(148½)	(164½)	(117½)
80	14	22	55.0	2.75	18	14	14	11
85	15	Ø24	Ø56.5	Ø2.82	Ø21	"	15	12
90	"	"	53.3	2.67	"	"	"	"
95	"	"	50.5	2.53	"	"	"	13
100	"	"	48.0	2.40	"	"	"	"
105	"	"	45.7	2.29	"	15	"	14
110	"	"	43.6	2.18	"	"	"	"
115	16	25	43.5	2.17	"	"	"	15
120	"	"	41.7	2.08	"	"	"	"
125	17	26	41.6	2.08	22	"	16	16
130	"	"	40.0	2.00	"	"	"	"
135	18	Ø28	Ø41.5	Ø2.07	"	"	"	17
140	"	"	40.0	2.00	"	17	"	"
145	"	"	38.6	1.93	"	"	"	18
150	"	"	37.3	1.87	"	"	"	"
--	--	(672)	--	--	(474	(374½)	(394½)	(338½)

For explanations see Page 2

(Caption continued from Page 1)

Miles	Scale IV Rates Basic	Rates Now	Revenue Now Mills Car Mi	Revenue Now Car Mi	(X) In Texas	(I) In Idaho	# M-K-T Scale	(C) Calif. Truck Scale
175	18	28	36.1	$ 1.81	Ø24	Ø28	17	19
180	"	"	31.1	1.56	"		"	22
185	20	Ø30	Ø32.4	Ø1.62	Ø26		19	23
210	"	"	28.6	1.43	"	Beyond	20	25
220	"	"	27.3	1.36	"	150	"	"
230	21	31	27.0	1.35	Ø.8	Miles	Ø22	26
260	22	32	24.6	1.23	"	no Pre-	Ø24	28
270	"	"	23.7	1.19	"	scribed	Ø26	29
280	23	Ø35	Ø25.0	Ø1.25	29	scale	Ø28	29
290	"	"	Ø24.1	1.21	"		29	30
--	--	(983)	--	--	(742)		(616½)	(594½)
310	23	35	22.6	1.13	29		29	Ø32
320	24	36	22.5	1.13	30		30	Ø34
360	25	37	20.6	1.03	31		31	Ø36
--	--	(1091)	--	--	(832)		(706½)	(696½)

Ø - To emphasize abrupt increase jumps and poor graduation in the scales, like a 3 cent jump at from 35 to 36 miles, and consequent higher earnings for longer than for shorter hauls.

(X)- The Texas scale, 50,000 pounds minimum, is depressed A/C motor competition up to 75 miles; it is subject to 15% increase. (Texas Lines' Tariff 58-D, No I.C.C. number.)

(I)- The Idaho 150 mile scale, minimum weight 40,000 pounds, is "truck compelled" - U.P. Tariff 6027-G, I.C.C. No. 5154.

- The M-K-T 290 mile truck compelled scale, minimum weight 60,000 pounds, is not subject to X-175 or any reissues thereof. W.T.L. Tariffs 132-K and 133-L, Agt. Prueter's I.C.C. Nos. A-3850 and A-3815 respectively.

(C)- California motor contract scale, minimum weight 38,000 pounds.

[fol. 871] PROTESTANTS' EXHIBIT NO. 79

I. C. C. DOCKET NO. 31484

This exhibit shows present rail rates on cement, minimum weight 40,000 pounds, except as shown, from Devil's Slide and Salt Lake City, to Utah points named, with distances from both, also lowest rate revenue in mills per ton mile; and per car mile, (50 tons average per car) from Devil's Slide.

FROM / TO	DEVIL'S SLIDE				SALT LAKE CITY	
	Miles	Rate	Mills	Per Car Mile	Miles	Rate
U.P. RR.						
Wahsatch	33	24	145.5	$7.27	101	29
Castle Rock	25	22	176.0	8.80	93	29
Baskin	13	21	323.1	16.15	81	28
Echo	8	12	300.0	15.00	76	21
Coalville	15	14	215.4	10.77	81	21
Park City	36	21	116.7	5.83	104	21
Devil's Slide	--	--	--	--	68	21
Morgan	7	8½-7 I	142.9	7.14	61	21
Ogden	32	" "	31.3	1.56	36	13-7 I
Brigham City	53	14	52.8	2.64	57	14
Tremonton	71	17	47.9	2.40	75	17
Washakie	88	21	47.7	2.39	92	21
Logan	105	21	40.0	2.00	109	21
Lewiston	122	25	41.0	2.05	126	25
Utida	95	25	52.6	2.63	99	25
Layton	47	12-7 I	25.5	1.28	22	13-7 I
Farmington	53	" "	22.6	1.13	15	" "
Salt Lake City	68	" "	12.6	.88	--	--

For explanations see Page 4

(Caption continued from page 1.)

FROM / TO	DEVIL'S SLIDE				SALT LAKE CITY	
	Miles	Rate	Mills	Per Car Mile	Miles	Rate
U.P.Cont'd.						
Murray	75	14H	37.3	$1.87	7	7½
Midvale	79	"	35.4	1.77	11	10½
Am. Fork	102	"	27.5	1.37	34	18
Geneva	111	"	25.2	1.26	43	18-10½H
Provo	115	15H	26.1	1.30	47	" "
Springville	120	21H	35.0	1.75	52	21-12H
Spanish Fork	124	22H	30.6	1.77	56	22-16H
Payson	132	24H	36.4	1.82	64	24-18H
Nephi	158	"	30.4	1.52	90	24-22H
Leaxington	191	"	25.1	1.26	123	24
Garfield	84	18	42.9	2.14	16	14.
St. John	118	24H	40.7	2.03	50	24
Tintic	156	"	30.8	1.54	88	"
Lynndyl	189	"	25.4	1.27	121	"
Delta	206	"	23.3	1.17	138	"
Fillmore	238	"	20.2	1.01	170	"
Milford	279	"	17.2	.86	211	"
Kerr	310	"	15.5	.77	242	"
Iron Mtn	350	"	13.7	.69	282	"
Cedar City	347	"	13.8	.69	279	"
Modena	346	"	13.9	.69	27	"
Uvada	354	38J-25I	14.1	.71	286	38J-25I

For explanations see Page 4.

[fol. 873]

(Caption continued from page 1)

FROM / TO	Devil's Slide				Salt Lake City	
	Miles	Rate	Mills	Per Car Mile	Miles	Rate
SOU. PAC. RR.						
West Weber	38	15J	78 9	$3.95	42	15J
Colin	64	18J	56 3	2 81	68	18J
Olney	89	28J	62 9	3 15	93	28J
Lucin	135	"	41 5	2.07	139	"
Gartney	140	29J	41 4	2.07	144	29J
D. & R. G. W						
*Barton	40	16H	80 0	4.00	31	7½H
Farmington	53	--	--	--	16	13-7 I
*Sugar House	74	19-11 I	29 7	1.49	5	7
*Murray	76	19½	51 3	2.57	7	7½
*Garfield	99	26	52 5	2.63	30	14
Bingham	94	29	61 7	3.09	25	22
*Utah Sugar Works	102	29-21H	41 2	2.06	29	18-9H
*Geneva	104	30-21H	40 4	2.02	35	" "
Provo	113	15h plus $10.43	44 3	1.15	44	18-10½H
Heber	139	32	46 0	2.30	70	26
*Ironton	114	30-21H	36 8	1.84	45	21-12H
*Springville	119	" "	35 3	1.76	49	" "
Spanish Fork	122	31-24H	39.3	1.97	53	22-17H
Payson	129	" "	37.2	1.86	60	24-18H
Santaquin	134	32	47.8	2.39	65	26
Iron King	152	"	42.1	2.11	83	29-28J

For explanations see page 4.

(Caption continued from page 1)

FROM / TO	DEVIL'S SLIDE Miles	Rate	Mills	Per Car Mile	SALT LAKE CITY Miles	Rate
D&RGW Cont'd.						
*Thistle	133	28H	42 1	32 11	64	15H
Ephraim	186	35-29H	31 2	1 56	117	32-22H
Spearmint	209	30H-29K	27 8	1 39	140	32-26H-24K
Richfield	238	31H-29K	24 4	1 22	168	" " "
Silver	242	36	29 8	1 49	172	32-29H
*Marysvale	265	37	27 9	1 40	196	" "
Colton	170	37-29H	34 1	1 71	101	31-22H
Castle Gate	184	" "	31 5	1 58	115	" "
Price	195	" "	29.7	1.49	126	32-22H
Wellington	201	37	36 8	1 84	132	32
Sunnyside	228	38	66.7	1.67	159	"
Green River	259	41	31 7	1.58	190	37
Westwater	326	43	26.4	1.32	257	41
W.P. RR.						
*Buena Vista	72	22½H-22J	61.1	3.06	4	13H-12J
*Lago	88	33H-24J	54.5	2 73	20	21H-12J
*Ellerbeck	103	24J	46.6	2.33	35	31-12J
Wendover	190	32J	33.7	1.68	122	41-32J

*- Devil's Slide rates subject also to Salt Lake combination.

Minima: H-50,000#; J-60,000#; K-80,000#; I-100,000#.

Distances (D&RGW 5024-E; U.P. 4000-A; W.P. 39-F)

Tariffs (D&RGW 4975-H; U. P. 6027-G; Local Utah Freight Bureau 1-Q.

I. C. C. DOCKET NO. 31484

This exhibit shows list of stations, 24 in all, in Utah to which one or more cars of cement were shipped via rail from Devil's Slide, Utah, in first 9 months of 1953; also the 26 Utah rail stations to which 1 or more shipments of cement were made by trucks in the same period, with the total number of barrels of cement shipped, and the revenue thereon calculated at the lowest rail carload rate, and regardless of the carload minimum weight

Carload Rail Shipments Made to:

Bountiful	Green River	Payson
Cedar City	Iron Mountain	Price
Clearfield	Layton	Provo
Columbia	Lead Mine	Richfield
Delta	Milford	Roy
Fillmore	Modena	Salt Lake City
Garfield	Nephi	Scofield
Geneva	Ogden	Tremonton

---

26 Stations to which cement moved by truck, total number of barrels shipped, and lowest estimate of revenue thereon lost by rail lines:

*Bountiful	*Layton	*Provo
Brigham	Logan	*Richfield
*Clearfield	Manti	Richmond
Coalville	Midvale	*Salt Lake City
Echo	*Milford	Spanish Fork
Emory	Morgan	Smithfield
Ephraim	Murray	Tooele
Garland	*Ogden	*Tremonton
Henefer	Orem	

---

* - Indicates the 9 stations to which rail shipments also made The total barrels via truck to above points were 358,396, or equal to 2,715 carloads of 132 barrels or 50,160# each, on which rail revenue would have been $138,733.97 or more.

I. C. C. DOCKET NO. 31484.

This page shows the Utah rail stations to which carload shipments moved via rail from Devil's Slide, Utah, in the first 9 months of 1953, with distances and rates, also compares the rates with Scale IV figures; also present rates for like distances in Texas, Idaho, Kansas, Missouri and Oklahoma under the MKT Scale, and the California contract truck scale.

Mi	TO	Rate Now	Scale IV	Texas - 15%	Idaho	M-K-T Scale	Calif Truck
59	*Bountiful	12-6 I	21	14	12	13	9½
347	Cedar City	24H	37	31	--	31	36
42	*Clearfield	12-6 I	21	11	11	11½	8
234	Columbia	38	32	28	--	24	28
206	Delta	24H	30	26	--	19	23
238	Fillmore	"	32	28	--	24	28
84	Garfield	18	15	21	14	15	12
111	Geneva	14H	16	21	15	15	15
259	Gr. River	41	32	28	--	24	28
350	Iron Mtn.	24H	37	31	--	31	36
47	*Layton	12-6 I	21	12	11	12	9
91	Lead Mine	29	24	21	14	15	12
279	*Milford	24H	35	29	--	28	29
346	Modena	24H	37	31	--	31	36
158	Nephi	24H	28	24	28	17	19
32	*Ogden	12-6 I	18	9	9	10½	7
129	Payson	31-24H	26	22	15	16	16
195	Price	37-29H	30	26	--	20	25
115	*Provo	15H	25	21	15	15	15
238	*Richfield	31H-29K	32	28	--	24	28
38	Roy	12-6 I	21	10	11	11	7
68	*S.Lake City	12-6 I	22	15	12	14	11
185	Scofield	37-29K	30	26	--	19	23
71	*Tremonton	17	22	17	12	14	11

* - Shipments made to these points by truck also.

Minima: H-50,000#; K-80,000#; I-100,000#.

[fol. 877] SUPREME COURT OF THE UNITED STATES

No. 362, October Term, 1956

PUBLIC SERVICE COMMISSION OF UTAH and UTAH CITIZENS RATE ASSOCIATION, Appellants,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION

ORDER NOTING PROBABLE JURISDICTION—November 5, 1956

APPEAL from the United States District Court for the District of Utah.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

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FILED
AUG 30 1956
JOHN T. FEY, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1956

PUBLIC SERVICE COMMISSION OF UTAH and UTAH CITIZENS RATE ASSOCIATION,
Appellants,

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,
THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY,
UNION PACIFIC RAILROAD COMPANY,
SOUTHERN PACIFIC COMPANY,
THE WESTERN PACIFIC COMPANY,
UTAH RAILWAY COMPANY,
BAMBERGER RAILROAD COMPANY,
TOOELE VALLEY RAILWAY COMPANY,
SALT LAKE, GARFIELD AND WESTERN RAILWAY COMPANY,
THE OGDEN UNION RAILWAY AND DEPOT COMPANY,
Appellees,

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

APPELLANTS' JURISDICTIONAL STATEMENT

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In the Supreme Court of the United States

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Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

APPELLANTS' JURISDICTIONAL STATEMENT

COME NOW the appellants above named and in accordance with the provisisions of Rule 13 (2) of the Rules of the Supreme Court of the United States, submit the following jurisdictional statement in support of their appeal to this court.

A. The opinions issued in this matter by the Court below have not at this time been published in Federal Supplement. The prevailing opinion of Circuit Judge Pickett and Judge Ritter, and the dissenting opinion of Judge Christenson are set forth in full in the appendix hereto.

B. The jurisdiction of this Court is evoked upon the following grounds:

(1) This was an action brought by the appellants for the purpose of annulling and setting aside an Order of the Interstate Commerce Commission under the provisions of Title 49, U.S.C., Section 19 (9) and Title 28, U.S.C. Sections 1366, 1398, 2284, 2321, 2322, 2323, 2324, and 2325 and pursuant to Title 5, U.S.C. Section 1009. The action thus commenced was required by the statutory provisions above quoted to be heard and determined by a District Court of three judges.

(2) The matter was heard by a District Court of three judges. Following the trial of the issues the Court, on the 13th day of June, 1956 made its Findings of Fact, Conclusions of Law and Final Decree denying the permanent injunction sought by the appellants and setting aside the interlocutory injunction theretofore entered in the matter. Said Findings of Fact, Conclusions of Law and Final Decree were filed and entered in the office of the Clerk of the United States Court for the District of Utah on the 18th day of June, 1956. These documents are set forth in the appendix hereto. Appellants' notice of appeal to the Supreme Court of the United States was filed with the United States District Court for the District of Utah on the 10th day of July, 1956.

(3) Title 28, U.S.C. 1253 covers jurisdiction of this Court to entertain a direct appeal from such Final Decree. Said Title 28, U.S.C. 1253, provides as follows:

> "Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and de-

termined by a district court of three judges. June 25, 1948, c. 646, 62 Stat. 926."

(4) The jurisdiction of this Court to consider such appeal was expressly upheld in the following cases: United States v. Hancock Truck Lines, Inc., et al, 324 U.S. 774; 89 L ed 1357; Interstate Commerce Commission v. Hoboken Manufacturers, 320 U.S. 368; 88 L ed 107. Although the question of jurisdiction was not specifically raised or passed upon, the Court in the following recent cases has taken jurisdiction of appeals from similar orders. Louisiana Public Service Commission v. United States, 348 U.S. 889; 99 L ed 696, rehearing denied 348, U.S. 921; 99 L ed 723. Mississippi Public Service Commission v. United States, 349 U.S. 908, 99 L ed 1244; State of North Carolina et al v. United States, et al, 350 U.S. 805, 100 L ed 46.

C. The questions presented by this appeal are as follows:

(1) Were the findings of the Interstate Commerce Commission challenged in the above entitled case supported by substantial evidence?

(2) May the court sustain the Interstate Commerce Commission's Order, without further evidence on the following:

(a) The presumption that interstate and intrastate rates were in proper relationship prior to the increase;

(b) The matter of common knowledge that intrastate and interstate traffic are intermingled on the same trains.

(3) May the Interstate Commerce Commission and the Court ignore the evidence of the protestants which detracts from the evidence of the railroads.

(4) May a collateral attack be made in this action upon the Interstate Commerce Commission Order in Ex Parte No. 175.

STATEMENT OF FACTS

In a proceeding entitled "Increased Freight Rates 1951" which will hereinafter be referred to as Ex Parte 175, the Interstate Commerce Commission in two preliminary orders and one final order granted to the Class I railroads of the United States permission to increase their interstate freight rates and charges a total of 15%. Thereafter the Class I railroads operating in and through the State of Utah made application to the Public Service Commission of Utah for similar increases on Utah intrastate rates. At the conclusion of the hearing before the Public Service Commission of Utah, the Commission ruled that the railroads had failed to present evidence warranting an increase in the Utah intrastate rates and dismissed the proceedings "without prejudice to applicants to apply for further hearing for the presentation of further evidence." The railroads made no further presentation of evidence before the Utah Public Service Commission, nor did they appeal to the Supreme Court of the State of Utah from the order as entered; rather they made application to the Interstate Commerce Commission under the provisions of 49 U.S.C. 13(3)(4) to allow the intrastate increases.

Pursuant to this petition, the Interstate Commerce Commission entered into an investigation of the Utah intrastate freight rates under I.C.C. Docket No. 31484. The appellants before this court appeared as protestants before the Interstate Comerce Commission. Following hearings on the matter, the Interstate Commerce Commission in a report issued on the 17th day of October, 1955 found that existing Utah intrastate rates and charges were abnormally low and that traffic thereunder failed to produce its fair share of earnings required to yield the respondent railroads' required revenue, and further

that the burden thus case upon Interstate Commerce was undue in and to the extent that the intrastate rates and charges were less than those recommended in the report.

A petition for rehearing was made and denied and on the 8th day of February, 1956, the Interstate Commerce Commission ordered into effect the 15% increase on Utah intrastate rates to become effective as of the 13th day of March, 1956. The appellants then brought their action in the United States District Court for an injunction setting aside the Interstate Commerce Commission order. A temporary restraining order and later a preliminary injunction were granted which kept the higher rates from going into effect pending the decision of the case on its merits. As pointed out above, in the final decree the Court refused the permanent injunction and set aside the temporary injunction. At the hearing before the United States District Court for the District of Utah, the entire transcript of the proceedings before the Interstate Commerce Commission in Docket No. 31484 including exhibits, was introduced in evidence and it was on the basis of this evidence that the parties sought relief. The evidence before the Interstate Commerce Commission in Docket No. 31484 fell into four general categories:

1. Operating statistics of the railroads.

2. Comparative interstate and intrastate rates.

3. Similarity of intrastate and interstate operating conditions.

4. General economic study of Utah.

1. *Operating statistics of the railroads.*

The railroads introduced evidence as to the systemwide

operating figures of the roads in question. No break-down of the figures between Utah operations and systemwide operations was made. These figures showed an average rate of return systemwide on the roads in question of slightly less than 4% for the years 1950 to 1953 if the railroad figures were taken at their face value, and an average return of about 4.6% if certain adjustments were made to make these studies conform with the ones introduced in Ex Parte 175.

The protestants presented evidence to show the Bamberger Railroad Company, the principal one of the appellant railroads operating entirely within the state of Utah, showed a rate of return in 1953 of 15.98%. Protestants also presented a study breaking down the operating figures of the interstate roads in question between systemwide and Utah operations, which study showed a materially lower operating ratio on the Utah operations.

2. *Comparative interstate and intrastate rates.*

Rate studies were introduced both by the railroads and the protestants. These studies show, that in some cases comparable interstate rates were lower than intrastate rates but in the great majority of cases the intrastate rates were already higher without the 15% increase than were the interstate rates including such increase.

3. *Similarity of intrastate and interstate operating conditions.*

The railroads introduced several witnesses who testified generally that intrastate and interstate freight was handled on the same cars, over the same rails, by the same platform crews and was accounted for by the same accounting department. The

protestants introduced evidence which showed that the density of traffic on shipments within the state of Utah was materially higher than the density of traffic systemwide on the railroads making application for intrastate increases.

4. *Economic conditions in Utah.*

Studies introduced by the railroads showed that in recent years the economy of Utah has changed from a primarily agricultural and mining economy to an industrial economy.

ARGUMENT

The principal matter presented to this court by this appeal has never been decided previously by this court and is of importance, not only in this case, but is important to all state regulatory commissions to aid them in determining just what are their powers and duties in regard to intrastate rates. Since the decision of this court in King v. United States, 344 U.S. 254, 97 L ed 301, the railroads have become more and more brief and summary in their presentation of evidence in Section 13 cases, as is well evidenced by the type of evidence presented in this case. If the type of evidence presented in this case is sufficient to permit the Interstate Commerce Commission to take jurisdiction of intrastate rates, the effect will be, in all cases, to make the state regulatory commissions mere rubber stamps for the Interstate Commerce Commission in the matter of fixing intrastate rates.

As was stated by Judge Christenson in his dissenting opinion:

"The rationale of the decision would mean that increases applied nationwide by the Interstate Commerce

Commission, coupled with matters of common knowledge and unwarranted presumptions concerning the interrelationship of interstate and intrastate traffic, automatically justify corresponding intrastate increases at the will of the Interstate Commerce Commission—a result at once inconsistent with the relationship between affairs national and local, at variance with controlling decisions, and not in keeping with the national transportation policy itself."

It is not true as the appellees stated in their motion to dismiss heretofore filed, or as the majority opinion implies that the appellants here maintained that the railroads have failed in their proof merely because they have failed to break down their operating figures between interstate and intrastate operations. We urged to the lower court and urge here that that is one method by which the railroads might prove their need for intrastate increases. However, this court in the case of King v. United States; supra, and also in the case of Illinois Commerce Commission v. United States, 292 U.S. 474, 78 L ed 1371, approved another method of proving the need for intrastate increases. As was stated in the Illinois case:

"Where the conditions under which interstate and intrastate traffic move are found to be substantially the same with respect to all factors bearing on the reasonableness of the rate, and the two classes are shown to be intimately bound together, there is no occasion to deal with the reasonableness of the intrastate rates more specifically, or to separate intrastate and interstate costs and revenues."

The question here presented for determination is - What is meant by the term "with respect to all factors bearing on the reasonablenes of the rate"? The railroads in Docket No. 31484 before the Interstate Commerce Commission established that the railroads handled interstate and intrastate freight in the same manner without distinction. This, however, was not a matter that required any evidence. It is a matter of common

knowledge to anyone who has the least knowledge about railroad operations. It is a matter of which the Commission and the courts should and have taken judicial notice. To rely entirely on such state of facts to establish that "all factors bearing on the reasonableness of the rate" are the same, ignores the all important element of density of traffic. It is also a matter of common knowledge that as the density of traffic over a given line increases, the unit cost of operation decreases. This results from the fact that while variable costs will bear the same on each unit of traffic regardless of the amount of traffic moved, the total fixed costs will remain substantially the same, regardless of the volume of traffic, and will bear less heavily on each unit of traffic moved as the volume of traffic increases. The railroads introduced no evidence at all on the question of density of traffic. The only evidence on this point came from the protestants before the Interstate Commerce Commission, who established that the volume of traffic was materially heavier within the state of Utah than it was system-wide on the roads in question.

If the railroads introduced any other evidence than general testimony as to similar methods of handling interstate and intrastate traffic touching upon the identity of factors bearing upon the reasonableness of rates, appellants are unable to discover it. It is the only evidence specifically referred to by the Interstate Commerce Commission in its report and the only evidence specifically referred to by the United States District Court for the District of Utah in its majority opinion.

As was stated by Judge Christenson in his dissenting opinion,

> "Except for general references to the similarity of conditions as between intrastate and interstate commerce and

certain unsupported conclusions discounting the effect of the affirmative evidence adduced on behalf of those opposing the increase, the facts set out in these subsidiary findings seem to recognize a substantial difference in conditions affecting rates."

The Interstate Commerce Commission makes a finding which is adopted by the court both in its Findings of Fact and in the majority opinion to the effect that:

> "The cost of handling the intrastate shipments was found to be as great if not greater than the handling of interstate freight."

However, neither the Interstate Commerce Commission Report, the Court's Finding of Fact, nor the Majority Opinion identify such evidence. Furthermore, the railroads have never pointed out any such evidence in any of their briefs in this proceeding. If such evidence exists in the record, appellants have been unable to find it. Likewise, Judge Christenson, whose minority opinion reflects a great deal of study of the record in this case, was unable to find such evidence. After searching the record for such evidence, Judge Christenson concluded:

> "The evidentiary basis in the record of the statement that a positive showing was made that the average unit expense of servicing Utah intrastate traffic is at least as great as that of servicing interstate traffic to and from Utah, cannot be found in the transcript, nor can I find it referred to in the briefs of the respondents. The record seems devoid of a comparison of conditions bearing on the reasonableness of rates, except for such common factors as were held in the first North Carolina case to be insufficient in the findings to support an order. It does not seem enough for the Commission to point to evidence of admitted differences in relevant factors and to say that the differences are not as great as those opposing the increases claim, without some basis in the record upon which to premise a finding that the differences are not substantial."

In the case of North Carolina v. United States, 325 U.S. 507; 89 L ed 1760, this Court held that mere disparity in interstate rates is not enough to warrant the Interstate Commerce Commission in taking jurisdiction of intrastate rates. However, because the Interstate Commerce Commission and the United States District Court in the majority opinion discussed to some extent the matter of disparity of rates, appellants desire to comment thereon in this brief. Rate studies were introduced by the railroads and also by the protestants before the Interstate Commerce Commission in regard to rates on coal. From this evidence it appears that in some instances interstate coal rates having a comparable haul are lower and in some instances higher than comparable intrastate rates.

The railroads introduced a study on class rates which showed that interstate rates out of Salt Lake were higher than intrastate rates out of Salt Lake for a similar distance. Protestants, however, introduced evidence to show that the interstate class rates were mere paper rates for the reason that there were in effect merchandise rates on intrastate traffic which was actually moving the traffic out of Salt Lake which would otherwise have moved on the class rates. These interstate merchandise rates were lower than the intrastate class rates. There were no comparable intrastate merchandise rates. Therefore, traffic which normally moves on class rates could move out of Salt Lake City interstate for a lower rate including the 15% increase than could similar goods moving intrastate for a comparable distance without the 15% increase.

Before the Interstate Commerce Commission, the railroads' witness Watson introduced some 20 exhibits on which were listed intrastate rates and interstate rates covering the some commodities. By and large the interstate shipments were

so long and the intrastate shipments were so short that very little could be gained by way of comparison. In the few instances where comparable distances were shown the intrastate rates were shown to be higher without the 15% increase than were the interstate rates, including the 15% increase. When cross-examined in this regard, the witness Watson stated that his exhibits were not intended as comparative rate studies, but were merely the basis for building up the railroads' estimate that the increases sought on Utah intrastate rates would yield the railroads an additional $1,800,000.00 revenue. With this latter proposition the appellants here have never taken issue.

The railroads introduced evidence as to the average revenue per ton mile on intrastate shipments systemwide on the roads as compared to the average revenue per ton mile on Utah intrastate shipments. Considerable was made of this study both by the Interstate Commerce Commission in its report and by the majority opinion in the court below. This study showed that the average revenue per ton mile was 1.43c for railroads in the United States, 1.393c in the Western District, 1.398c per ton in the Mountain-Pacific states and only 1.258c per ton in the state of Utah. Both the Commission and the Court overlooked the admissions on cross examination of witness Kroll, who introduced this study to the effect that the consistency of the traffic within the state of Utah was weighed much more heavily in favor of the lower revenue, lower cost products of the mine than were the other figures. These figures clearly appear to be subject to the criticism of Judge Christenson as follows:

> "Comparative revenue figures per ton mile covering interstate and intrastate traffic lumped together without taking into consideration differences affirmatively shown to exist in factors affecting the respective costs, again may

have a bearing on other phases of a rate case, but furnish no rational basis for concluding that all factors affecting costs are substantially the same for interstate and intrastate traffic, * * * "

The report of the Interstate Commerce Commission and the majority opinion both brushed aside the showing of protestants that on like commodities when shown separately, the revenue per ton mile on Utah intrastate shipments was considerably higher without the 15% than was the revenue per ton mile on interstate shipments having Utah as a point of origin or destination. Let us assume, however, for purposes of this brief, that the Interstate Commerce Commission could have found under the evidence that a 15% increase was necessay in Utah intrastate rates to bring them up to the level of interstate rates. Still, as pointed out in Notrh Carolina v. United States, Supra, this alone is not enough to jusdify the Interstate Commerce Commisson in taking jurisdiction. In addition to that they must establish:

(a) The railroads making the application have an overall need for additional revenue. (Which we agree the Commission could find from the evidence introduced.)

(b) That all factors bearing upon the reasonableness of the rates are substantially the same as affecting interstate and intrastate rates.

On this last point we maintain that the evidence introduced before the Interstate Commerce Commission fails completely. If the burden of proving this last point is met by the facts as set out in Finding of Fact No. 14, then there was no need whatever for the Utah Commission to hold a hearing or for the Interstate Commerce Commission to hold a hearing on the 13th Section application, because in effect the matter as to Utah

intrastate rates and the intrastate rates of every other state in the union had already been decided in Ex Parte 175.

In the case of Mississippi Public Service Commission v. United States of America and the Interstate Commerce Commission, 124 Fed. Supp. 809, in a decision affirmed by this Court, 349 U. S. 908, 99 L ed 1244, the Court stated:

> "The record shows that in making the investigation for the nation as a whole in Ex Parte No. 175, that the Commission at that time was making a determination that the intrastate rates should be increased as well as the interstate rates. This will not do. There must be a finding based upon substantial evidence after a full investigation that the intrastate rates are abnormally low and that traffic thereunder fails to produce its fair share of the earnings to yield revenue sufficient to accomplish the purpose of interstate commerce. The record does not bear out any substantial evidence to this effect. There was no separation made by the railroads of their revenues, expenses and properties as between interstate and intrastate operations. So far as the record shows, it could be fairly assumed that the rates fixed by the Mississippi Commission were not abnormally low but were bearing a fair percentage of revenue for the operation of the carriers."

While appellants do not agree with the Mississippi case, if the court is implying that a division of revenue, interstate and intrastate is the only method for the railroads to prove the need for additional intrastate revenue, certainly the above quotation is very much in point where the railroads neither divide their operating statistics between interstate and intrastate operations, nor do they prove that all factors touching the reasonableness of the rates are the same interstate and intrastate.

This court has held that the mere showing that railroads intermingled interstate and intrastate shipments is not enough

to warrant the Interstate Commerce Commission in taking jurisdiction of intrastate rates. In the case of Alabama Public Service Commission v. Southern Ry. Co., 341 U.S. 341, 95 L ed. 1002, this Court stated:

> "Appellee conducts an interstate business over the same tracks and by means of the same trains involved in this case, and such interstate activities are regulated by the Federal Interstate Commerce Commission, 49 USC Sec. 1, et seq. But, it has long been held that this interblending of the interstate and intrastate operations does not deprive the states of their primary authority over intrastate transportation in the absence of congressional action supplementing that authority."

CONCLUSION

The principal issue presented by this appeal is clear cut. It is this - Does the mere showing that railroads intermingle interstate and intrastate traffic on the same equipment meet the test of the King case and the Illinois case to show that all factors touching the reasonableness of rates are the same? If so, there was sufficient evidence in the record to sustain the findings. If not, there was not. It will not require this court to examine the large volume of evidence before the Interstate Commerce Commission. It will merely require that the appellees refer in the record to any other evidence than that above mentioned which sustained the finding as to identity of circumstances under which interstate and intrastate traffic move, a thing which Judge Christenson says the appellees did not do for the court below. Appellants are not asking this court to weigh the evidence, we are merely asking the court to see if the appellees can point out any evidence which could sustain the findings.

Again appellants urge that if the mere fact that the traffic is intermingled is sufficient to establish the "sameness of conditions," then indeed there is no jurisdiction of intrastate rates left in the state commissions. The courts and the commission can take judicial notice of the intermingling of traffic. Therefore, as quickly as the need for an overall increase in revenue is established in ex parte interstate proceedings, the jurisdiction of the Interstate Commerce Commission over intrastate rates is immediately established. This is a matter which in the public interest needs clarification, not merely by granting a motion to affirm but after full hearing and argument. If the power of the states to regulate intrastate rates is in fact dead, then it should be buried.

Respectfully submitted,

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PROOF OF SERVICE

I, CALVIN L. RAMPTON, counsel of record for appellants, and a member of the bar of the Supreme Court of the United States, hereby certify that on the .... day of August, 1956, I served, on behalf of the appellants herein, copies of the foregoing Appellants' Jurisdictional Statement, as follows:

1. On the United States, by leaving a copy thereof at the office of A. Pratt Kesler, United States Attorney for the District of Utah, at Room 200 Federal Building, Salt Lake City, Utah, and by mailing a copy in a duly addressed envelope, with air mail postage prepaid to the Solicitor General, Department of Justice, Washington, D.C., and to Stanley N. Barnes, Assistant Attorney General, Department of Justice, Washington, D.C.

2. On the Interstate Commerce Commission, by mailing a copy in a duly addressed envelope, with air mail postage prepaid, to Robert W. Ginnane, Esq., General Counsel, and Charles H. Johns, Assistant Counsel, at the offices of the Commission, Washington, 25, D.C.

3. On the intervening defendants by mailing copies in duly addressed envelopes, with first-class postage prepaid, to their respective counsel of record as follows:

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CALVIN L. RAMPTON
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APPENDIX

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

CIVIL ACTION NO. C-8-56

PUBLIC SERVICE COMMISSION OF UTAH and UTAH CITIZENS RATE ASSOCIATION,

Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,

Defendants;

and

UNION PACIFIC RAILROAD COMPANY, THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, SOUTHERN PACIFIC COMPANY, THE WESTERN PACIFIC RAILROAD COMPANY, BAMBERGER RAILROAD COMPANY, THE OGDEN UNION RAILWAY AND DEPOT COMPANY, SALT LAKE-GARFIELD AND WESTERN RAILROAD COMPANY, TOOELE VALLEY RAILWAY COMPANY, and UTAH RAILWAY COMPANY,

Intervenors.

OPINION

E. R. Callister, Attorney General; Raymond W. Gee, Deputy Attorney General; Keith E. Sohm, Commerce Attorney, Salt Lake City, Utah, for plaintiff Public Service Commission; Calvin L. Rampton, Salt Lake City, Utah, for plaintiff Utah Citizens Rate Association;

Stanley N. Barnes, Assistant Attorney General; James E. Kilday, E. Riggs McConnell, Attorneys Department of Justice, Washington, D.C., and A. Pratt Kesler, United States Attorney, Salt Lake City, Utah, for defendant United

States of America; Robert W. Ginnane, General Counsel, Charlie H. Johns, Assistant Counsel, I. C. C., Washington, D. C., and George W. Howard, Salt Lake City, Utah, for defendant Interstate Commerce Commission;

Bryan P. Leverich, S. N. Cornwall, A. H. Nebeker, Peter W. Billings, John H. Snow, A. S. Frederickson, and J. E. Morgan, Salt Lake City, Utah, for Inetrvening Defendants.

BEFORE PICKETT, United States Circuit Judge, RITTER, Chief Judge, and CHRISTENSON, United States District Judges.

PICKETT, United States Circuit Judge.

The Public Service Commission of the State of Utah and the Utah Citizens Rate Association brought this action to set aside and enjoin the enforcement of an order of the Interstate Commerce Commission granting an increase of intrastate freight rates in Utah in a proceeding under Sec. 13 (3) and (4) of the Interstate Comerce Act. 49 U. S. C. A., Sec. 13 (3), (4).[1] The Class I railroads operating in Utah intervened. A statutory three-judge court was constituted and an interlocutory injunction granted pending a hearing on the merits of the case.

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1 49 U. S. C. A., Sec. 13(4), reads as follows:

"Whenever in any such investigation the commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes an undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding."

The underlying proceedings which give rise to this action originated in 1951 before the Interstate Commerce Commission, entitled "Increased Freight Rates 1951," herein referred to as "Ex Parte 175," wherein Class I railroads of the United States sought an overall increase in interstate freight rates. After some percentage increases had been authorized, the Commission, on April 11, 1952, granted increases totaling 15% to all railroads on interstate rates, 284 I. C. C. 589. This increase was subject to certain exceptions and hold-downs. The railroads operating in Utah made application to the Public Service Commission of Utah for increases in intrastate rates in the same percentage as those granted in Ex Parte 175.

The Utah Commission refused to grant the increases and Section 13 proceedings were instituted before the Interstate Commerce Commission, which entered into an investigation of the Utah intrastate rates. A full and complete hearing was had, at which evidence was offered by the railroads and by protestants, including these plaintiffs. The Interstate Commerce Commission, with exceptions, found that the Utah intrastate rates and charges were abnormally low; that conditions incident to intrastate transportation in Utah were not more favorable than those incident to interstate transportation in that state; that traffic thereunder failed to produce its fair share of earnings required to yield the railroads sufficient revenue to provide adequate and efficient railway transportation service to accomplish the purposes of the Interstate Commerce Act, and that Utah intrastate rates cast an undue burden upon interstate commerce. 297 I. C. C. 87.[2] It was also found that

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2 The Commission's findings (297 I. C. C. 105), are as follows:

"1. The conditions incident to the intrastate transportation freight in Utah are not more favorable than those incident to the

(Continued on next page)

the undue burden and unjust discrimination should be removed by applying to the Utah intrastate rates and charges the interstate increase authorized in Ex parte 175 on like intrastate traffic. The increases, however, were limited by the provision "that increases may not be made in intrastate rates to levels higher than the interstate rates on like traffic to or from Utah for like or greater short-line distances over the same lines of railroad, except in instances where the interstate rates, and not the intrastate rates, are designated as published to meet motor-carrier competition." It is conceded that the findings

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(Continued from preceding page)

interstate transportation between Utah and adjoining States.

"2. The amounts and percentages by which interstate freight rates and charges between points in Utah and points in other States were increased, as authorized in Ex Parte No. 175, are just and reasonable.

"3. The present Utah intrastate rates and charges on carload and less-than-carload freight, except on sugar beets and beet-sugar, final molasses destined to sugar factories, and excepting certain rates on coal, sheep, and cattle, hereinafter enumerated, imposed by authority of the State, are abnormally low, and traffic thereunder fails to produce its fair share of the earnings required to yield revenue sufficient to enable the respondents, under honest, economic, and efficient management, to provide adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service, and thereby accomplish the purposes of the Interstate Commerce Act, as set forth in the National transportation system adequate to meet the needs of the commerce of the United States, of the postal service, and of the national defense. The burden thus cast upon intrastate rates and charges are less than they would be on the bases herein prescribed; and these intrastate rates and charges cause, and for the future will cause, undue, unreasonable, and unjust discrimination against interstate commerce.

"4. The undue, unreasonable, and unjust discrimination herein found to exist should be removed by applying to the Utah intrastate rates and charges, on the commodities and traffic herein described, the same respective increases as are and for the future may be maintained by the respondents on like interstate traffic between points in Utah and adjoining States under our authoriza-

(Continued on next page)

meet the requirements of King v. United States, 344 U. S. 254, but it is urged that the evidence does not sustain them.

The Utah Commission did not authorize the increases within the time provided in the order and the railroads were then directed by the Interstate Commerce Commission to make the 15% increase effective on Utah intrastate rates as of March 13, 1956. This action followed.

The matter is before us on the record of the Interstate Commerce Commission proceedings under Section 13. At the

(Continued from preceding page)

tion in Ex Parte No. 175, provided that increases may not be made in intrastate rates to levels higher than the interstate rates on like traffic to or from Utah for like or greater short-line distances over the same lines of railroad, except in instances where the interstate rates, and not the intrastate rates, are designated as published to meet motor-carrier competition.

"5. The establishment of increases in intrastate rates and charges as prescribed in finding 4 will not result in unreasonable rate, or rates that are unreasonable in relation to interstate rates, and will substantially increase the respondents' annual revenues.

"6. The increased revenues to the respondents which will result from the increased rates and charges as provided in finding 4 are required from intrastate traffic in Utah in order to enable the respondents to provide adequate and efficient railway transportation service.

"7. In certain instances it appears that the present Utah intrastate rates are now as high as corresponding interstate rates, including the Ex Parte No. 175 increases for comparable distances. The intrastate rates specified below, are excepted from the findings herein:

"Rates on coal, viz:

"From Castle Gate to Milford, Utah, slack and other sizes.

"From Castle Gate to Lund, Utah, slack and other sizes.

"From Castle Gate to Devil's Slide, Utah, slack.

"Rates on sheep, in double-deck cars, viz:

"From Lakeside to Wasatch, Utah.

"From Cedar City to Kaysville, Utah.

"Rates on cattle, in single-deck cars, viz:

"From Spanish Fork to Ogden, Utah."

opening of the trial the plaintiffs introduced in evidence the Interstate Commerce Commission records and, in addition, offered the record of proceedings made before the Public Service Commission of Utah. The court reversed ruling on the admissibility of the latter record, which had not been introduced in the proceedings before the Commission. It is well settled that when an order of the Interstate Commerce Commission is questioned in an action of this nature, the court shall consider only such matters as were before the Commission prior to the issuance of its order. Tagg Bros. & Moorehead v. United States, 280 U. S. 420, 443; Louisville & Nashville R. Co v. United States, 245 U. S. 463, 466; New York v. United States, 331 U. S. 284, 335; Sakis v. United States, 103 F. Supp. 292, App. Dismissed, 344 U. S. 801. The record in the State proceeding is irrelevant and the objection to its admission in evidence is sustained.

The power of Congress to authorize the Interstate Commerce Commission to establish intrastate rates in order to remove unjust discrimination against interstate commerce is not open to dispute. The plaintiffs here do not question that power, although they do question the reasonableness of the increases in Ex Parte 175. See King v. United States, 344 U. S. 254, 274; Florida v. United States, 282 U. S. 194, 211. It appears quite clear that Congress intended that the railway system of the country shall have a reasonable return to carry out the purposes of the Interstate Commerce Act, which would include compensation for intrastate business reasonably proportionate with the interstate business. Wisconsin R. Commission v. Chicago, B. & Q. R. Co., 257 U. S. 563, 588; Illinois Commerce Commission v. United States, 292 U. S. 474, 483. The fundamental purpose of the Congress in enacting Section 13, subdivisions (3) and (4), was to reach intrastate rates that were found to

result in unjust discrimination against interstate commerce. Florida v. United States, 282 U. S. 194, 210. The purpose of Section 13(4) is not limited to the removal of unjust and unreasonable discriminations against interstate commerce as it relates to persons and localities, but it imposes on the commission the affirmative duty "to take other important steps to maintain an adequate railway service for the people of the United States." Wisconsin R. R. Commission v. C., B. & Q. R. Co., 257 U. S. 563, 585; Florida v. United States, 282 U. S. 194.

In determining the validity of an order of this nature, a reviewing court may not weigh the evidence; it may not negative the action of the Commission, being "one of those agencies presumably equipped or informed by experience to deal with the specialized field of knowledge ,whose findings within that field carry the authority of an expertness which courts do not possess and therefore must respect," if from a consideration of the entire record there is a rational basis for the action. Universal Camera Corp. v. Labor Board, 340 U. S. 474, 488. The court may set aside the order, "when it cannot conscientiously find that the evidence supporting that decision is substantial, when viewed in the light that the record in its entirety furnishes, including the body of evidence opposed to the Board's View." Universal Camera Corp. v. Labor Board, supra.

In Interstate Commerce Commission v. Jersey City, 322 U. S. 503, 513 ,it was said: "* * * 'So long as there is warrant in the record for the judgment of the expert body it must stand. * * * The judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body.' Rochester Telephone Corp. v. United

States, 307 U. S. 125, 145-146; Miss. Valley Barge Line Co. v. United States, 292 U. S. 282, 286-87."

The principal contention of the plaintiffs is that the evidence does not sustain the finding that the existing intrastate rates cause undue, unreasonable and unjust discrimination against interstate commerce. It is said that the evidence fails because there has been no separation of interstate and intrastate costs and revenues. The evidence is to the effect that there is no distinction in the handling of interstate and intrastate freight shipments. They are both handled on the same trains, by the same crews; the same accounting department, the same traffic department, and the same facilities are used in the dispatch of both shipments. Under such conditions, the contention of the plaintiffs has been rejected by the courts. King v. United States, supra; Illinois Commerce Commission v. United States, supra; State of North Carolina v. United States, 128 F. Supp. 718, Aff. 350 U. S. 805. In the Illinois Commerce case, the court said (292 U. S. 474, 483-484):

> "Where the conditions under which interstate and intrastate traffic move are found to be substantially the same with respect to all factors bearing on the reasonableness of the rate, and the two classes are shown to be intimately bound together, there is no occasion to deal with the reasonableness of the intrastate rates more specifically, or to separate intrastate and interstate costs and revenues."

This does not mean that there must be a uniformity in interstate and intrastate rates. Intrastate transportation is primarily the concern of the state. The Interstate Commerce Commission is without authority to supplant intrastate rates unless there are findings supported by evidence that conditions exist which may bring Sec. 13(4) into play. To authorize an interference with intrastate rates, it must be shown that the

intrastate and interstate traffic are intimately bound together; that the conditions incident to intrastate transporation are no more favorable than those incident to interstate traffic, and that the intrastate rates involved are abnormally low and are not contributing their fare share of the revenue to which the railroads are entitled. The mere existence of a disparity in rates is not enough to warrant interference by the Interstate Commerce Commission. North Carolina v. United States, 325 U. S. 507, 516. The State Commission has complete control of intrastate rates so long as those rates do not unduly burden or discriminate against interstate commerce.

In finding that such a burden and discrimination existed, the Commission did not rely entirely on the disparity in rates. It was shown that the conditions under which interstate and intrastate traffic move were substantially the same with respect to all factors bearing on the reasonableness of the rates. The railroads' general need for additional revenue was established in Ex Parte 175. There is evidence to the effect that the earnings on the railroads' investments in Utah are below the national average. The economic ability of the Utah traffic to bear the 15% increase found necessary in Ex Parte 175 was shown. The economic conditions in Utah in 1950 had improved greatly over the preceding period, both actually and relatively. Wages were higher than the national average; higher wages and costs of operation which the railroads had to pay in Utah and elsewhere were shown; there had been a substantial increase in the railroads' property investment in the State while there was a decrease in net operating income. The cost of handling intrastate shipment was found to be as great, if not greater, than the handling of interstate freight. The percentage of return on net investment of the railroads in Utah was 3.82% in 1953, as compared with 3.98% in 1948, 2.58% in 1949; 4.33% in

1950, 3.66% in 1951, and 3.91% in 1952. The record also shows that in 1952 the revenue per ton mile of railroads in the United States was 1.43 cents; in the Western District, 1.393 cents; and in the Mountain Pacific states, which includes Utah, 1.398 cents per ton mile; and in the State of Utah, on intrastate and interstate traffic, 1.258 cents per ton mile. The total annual loss to the railroads caused by the failure to grant the requested increase in Utah was estimated at $1,880,347.[3]

In State of North Carolina v. United States, 128 F. Supp. 718, Aff. 350 U. S. 805, the state sought to nullify an order of the Interstate Commerce Commission, applying the Ex Parte 175 rates to intrastate freight in North Carolina. There may be some varying conditions, but on the whole the case was the same as the one before us. In answering the argument that the record did not disclose that the intrastate rates resulted in an undue discrimination against interstate commerce, the court said (P. 722, 723):

> "Plaintiffs contend that there was no sufficient showing of discrimination against interstate commerce and in favor of intrastate commerce resulting from the intrastate rates. It appears, however, that, without the Ex Parte

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3/ In Illinois Commerce Comm'n. v. United States, 292 U. S. 474, 479, the court said:

> "The scope and application of Sec. 13(4) have so recently been fully considered in opinions of this Court in United States v. Louisiana, 290 U. S. 70; Florida v. United States, ante, p. 1; see also Georgia Public Service Comm. v. United States, 283 U. S. 765; Florida v. United States, 282 U. S. 194; that it is unnecessary to repeat that discussion here. Under 13(4) of the Interstate Commerce Act, the Interstate Commerce Commission is given plenary power to remove the discrimination created by intrastate rates so that the intrastate traffic may produce its fair share of the revenue required to meet maintenance and operating costs and to yield a fair return on the value of property devoted to the transportation service."

No. 175 increases on any of their traffic in 1953, the return on net investment in 1953 for the four principal carriers receiving 87% of the intrastate revenue would have been 0.94% for the Norfolk Southern, 4.63% for the Seabord, 4.35% for the Southern and a deficit of more than $4,000,000 for the Atlantic Coast Line, or a combined return for the four roads of 2.84%. This is not a case, then, as plaintiffs argue, where an unnecessary increase was granted in a prosperous territory because of a need in other sections. The need for increase existed in North Carolina as these figures show, and the Commission estimated that the total loss from the non-application of the increase in 1953 was $1,500,000. As the cost of handling intrastate freight was shown to be as great as or greater than the handling of interstate freight, the raising of interstate rates without raising intrastate rates necessarily resulted in throwing an undue share of the cost of the service upon interstate transportation. As said by Mr. Justice Stone in Illinois Commerce Commission v. United States, 292 U. S. 474, 485, 54 S. Ct. 783, 787, 78 L. Ed. 1371, 'The effect of maintaining a lower rate, intrastate, than the reasonable interstate rate is necessarily discriminatory wherever the two classes of traffic, inextricably intermingled, are carried on, as in the District, under substantially the same conditions.'

"In Railroad Commission of State of Wisconsin v. Chicago, B. & Q .R. Co., 257 U. S. 563, 568, 42 S. Ct. 232, 236, 66 L. Ed. 371, Chief Justice Taft, speaking for the court, said:

> " 'If the railways are to earn a fixed net percentage of income, the lower the intrastate rates, the higher the interstate rates may have to be. The effective operation of the act will reasonably and justly require that intrastate traffic should pay a fair proportionate share of the cost of maintaining an adequate railway system. * * * If that purpose is interfered with by a disparity of intrastate rates, the Commission is authorized to end the disparity by directly removing it, because it is plainly an "undue, unreasonable, and unjust discrimination against in-

tersfate or foreign commerce" within the ordinary meaning of those words.' * * * "

In similar cases concerning the same matter, Louisiana Public Service Commission v. United States, 125 F. Supp. 180, Aff. 348 U. S. 885, sustained the order of the Interstate Commerce Commission, and Mississippi Public Service Commission v. United States, 124 F. Supp. 809, Aff. 349 U. S. 908, with one judge dissenting, set aside and enjoined the enforcement of the order.

Plaintiffs' contention that the order relating to the Utah intrastate rates is invalid because of the flat percentage increase of 15% in Ex Parte 175, with a savings clause, was contrary to law, is without merit. The validity of the Commission's order in Ex Parte 175 is not subject to a collateral attack. Callanan Road Co. v. United States, 345 U. S. 507, 512; Securities & Exchange Commission v. Central-Illinois Securities Corp., 338 U. S. 96, 143; City of Tulsa v. Midland Valley R. Co., 168 F. 2d 252. The determination of just and reasonable rates is for the Commission, not the courts. Montana-Dakota Utilities Co. v. Public Service Commission, 341 U. S. 246, 251; Swayne & Hoyt. Ltd. v. United States, 300 U. S. 297, 304; Interstate Commerce Commission v. Illinois Central R. R. Co., 215 U. S. 452, 470; Manufacturers Ry. Co. v. United States, 246 U. S. 457, 481; Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co., 204 U. S. 426. The courts, in appropriate cases, have upheld flat horizontal percentage rate increases which contained a savings clause to prevent injustices. United States v. State of Louisiana, 290 U. S. 70; The New England Divisions Case, 261 U. S. 184, 187; Wisconsin R. Commission v. Chicago, B. & Q. R. Co., supra.

The plaintiffs urge that the record discloses that the Utah

intrastate rates, without the 15% increase, are contributing more, not less, than their fair share of the overall revenue needs of the railroads. The Commission did not so find. While the exhibits, in some instances, show intrastate rates equal to or even higher than interstate service, this may result from varying causes which are not material here. The clear import of the Commission's order is that increases in intrastate rates shall not be made to levels higher than interstate rates for like traffic. The order is also without prejudice to a reexamination as to the lawfulness of any individual Utah intrastate rate on any particular commodity.

We have considered the voluminous record and conclude that the findings of the Commission are supported by substantial evidence. The complaint is dismissed and the interlocutory injunction dissolved; costs to be assessed to the plaintiffs.

Dated this 23 day of May, 1956.

/s/ John C. Pickett
Circuit Judge

/s/ Willis W. Ritter
District Judge
District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

CIVIL ACTION NO. C-8-56

PUBLIC SERVICE COMMISSION OF UTAH and UTAH CITIZENS RATE ASSOCIATION,

Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,

Defendants;

and

UNION PACIFIC RAILROAD COMPANY, THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, SOUTHERN PACIFIC COMPANY, THE WESTERN PACIFIC RAILROAD COMPANY, BAMBERGER RAILROAD COMPANY, THE OGDEN UNION RAILWAY AND DEPOT COMPANY, SALT LAKE-GARFIELD AND WESTERN RAILROAD COMPANY, TOOELE VALLEY RAILWAY COMPANY, and UTAH RAILWAY COMPANY,

Intervenors.

CHRISTENSON, District Judge (Dissenting)

I dissent from the holding of the majority that there is substantial evidence in the record supporting the order of the Interstate Commerce Commission in this case. There is agreement upon all of the other points decided and with the statement of principles contained in the prevailing opinion. It is submitted, however: (I) that the Decisions of the Supreme Court of the United States do not warrant the applications made; (II) that the record itself does not furnish any substantial basis for the Commission's ultimate findings; (III) that to bring the case within the doctrine of *Illinois Commerce Com-*

mission et al v. United States et al., 292 U. S. 474; 54 S. Ct. 783, 78 L. Ed. 1371, unauthorized presumptions would have to be indulged and evidence not before the Court would have to be assumed; and (IV) that the rationale of the decision would mean the increases applied nationwide by the Interstate Commerce Commission, coupled with matters of common knowledge and unwarranted presumptions concerning the interrelationship of interstate and intrastate traffic, automatically justify corresponding intrastate increases at the will of the Interstate Commerce Commission—a result at once inconsistent with the relationship between affairs national and local, at variance with controlling decisions, and not in keeping with the national transportation policy itself. The far-reaching issue thus presented will excuse—I believe that it requires—my presuming to state views on the foregoing points as they differ from those of my respected colleagues.

I.

The prevailing opinion properly recognizes that there need not be uniformity in interstate and intrastate rates; that intrastate transportation is primarily the concern of the state; and that the Interstate Commerce Commission is without authority to supplant intrastate rates unless there are findings supported by evidence that conditions exist which bring Section 13(4) of the Interstate Commerce Act, 49 U. S. C. A. 13(4), into operation. The most direct and positive way to show jurisdictional facts in dispute here would be to break down operating figures, both as to income and expense, on an intrastate basis in order to permit comparison with corresponding interstate figures. The railroads have said that this is impracticable, and no doubt it is in many cases. The decision in *Illinois Commerce*

et al. v. United States et al. supra, dispenses with the necessity of producing such figures if certain other facts are shown to exist. The rule requiring such other showing in the absence of the type of direct evidence mentioned is not a mere generality obviating the need of proof. It is a substitute formula to be looked to for the establishment of jurisdiction, if, and only if, the elements on which the formula is premised to be established.

Illinois stands for the proposition that where the conditions under which interstate and intrastate traffic move are found to be substantially the same with respect to all factors bearing on the reasonableness of the rate, and the two classes are shown to be intimately bound together, there is no occasion to deal with the reasonableness of the intrastate rates more specifically, or to separate intrastate and interstate costs and revenues. It must be noted that it is not sufficient in order to justify the application of this doctrine that the two classes are intimately connected, and it is not sufficient that some conditions affecting the respective rates have common application. It must also appear that conditions are substantially the same with respect to all factors bearing on reasonableness or that conditions incident to the intrastate transportation of freight are not more favorable than those incident to interstate transportation, which latter idea will be included in the concept of "sameness" hereinafter referred to. Logically, as well as from the language of the decision, this seems inescapable. A substantial divergence of some, though not most, of the factors would destroy the very basis of the formula. It should be further observed that in *Illinois Commerce Commission et al v. United States et al., supra*, there was involved a somewhat different factual problem than is presented here. The rates were not statewide, but covered the "Chicago Switching District." The district

was essentially a unit as far as switching operations were concerned. Movements were chiefly between local industries and involved a complete service originating and terminating within the district, although the district was intersected by the boundary between the states of Illinois and Indiana.

King et al. v. United States et al., 344 U. S. 254, 73 S. Ct. 259, 97 L. Ed. 301, determined that the Interstate Commerce Commission in prescribing intrastate freight rates for railroads under Section 13(4) of the Interstate Commerce Act, may give weight to deficits in passenger revenue. The Court held that there was no evidence which would require the Commission to treat Florida intrastate rates differently from interstate rates in southern territory. It was pointed out that whereas, in *State of North Carolina v. United States,* 325 U. S. 507, 65 S. Ct. 1260, 89 L. Ed. 1760, there was evidence to indicate that the conditions in that state were more favorable to profitable intrastate transportation of passengers than in the nation at large, the Commission's findings in the King case were to the contrary. No question was raised as to the adequacy of the evidence upon which the findings were based and thus, this case is not very helpful on the crucial problem here.

In *State of North Carolina v. United States, supra,* the principles are laid down that intrastate transportation is primarily the concern of the state; that the power of the Interstate Commerce Commission with reference to such intrastate rates is dominant only so far as necessary to alter rates which injuriously affect interstate transportations; that before the Commission can nullify a state rate, justification for the exercise of the federal power must clearly appear; and that the Interstate Commerce Commission is without authority to supplant a state-prescribed intrastate rate unless there are clear

findings, supported by evidence of each element essential to the exercise of that power by the Commission. In the light of these principles, the Supreme Court examined the sufficiency of the Commission's findings and found them sufficient to support the order of the Commission. It stated (p. 512):

> "In effect, the Commission's holding was, and its argument is here that § 13(4) automatically requires complete uniformity in intrastate and interstate rates. That argument is in short that under our national transportation system interstate travelers and intrastate travelers use the same trains; for a state to fix a lower intrastate rate than the interstate rate is therefore an undue advantage to the intrastate passengers and an unfair discrimination against the interstate passengers. If Congress intended to permit such an oversimplified form of proof to establish 'unjust discrimination', then its requirements for a 'full hearing' was mere surplusage."

Emphasizing the necessity that the basis of federal jurisdiction appears, it is further said (p. 511):

> "* * * A scrupulous regard for mainatining the power of the state . . this field has caused this Court to require that interstate Commerce Commission orders giving precedence to Federal rates must meet a 'high standard of certainty.' Illinois Central R. Co. v. Public Utilities Commission, 245 U. S. 493, 510. Before the Commission can nullify a state rate, justification for the 'exercise of federal power must clearly appear.' Florida v. United States, 282 U. S. 194, 211-212."

Four three-judge cases, three of them of recent date and each of them affirmed on motion without opinion by the Supreme Court, touch upon the problem here to varying degrees. They are referred to in the order in which they were decided.

State of New York et al v. United States et al., D. C. N. D. N. Y., 1951, 98 F. Supp. 855, affd. 342 U. S. 882, 72 S. Ct. 152, 96 L. Ed. 662, discussed the matter of similarity of trans-

portation conditions, holding that whether similarity exists is a question of fact. It was stated that the term denotes a general likeness, an approximation, something less than an absolute identity. But the question of similarity was not involved in the way it is here. There was an attack on the similarity of services rendered New York and Connecticut commuters, and it was held that the findings of similarity of service was based upon evidence that appeared to be substantially undisputed. The opinion indicates that on the issue corresponding to the determinative one here, there were cost studies in evidence, and one of the principal disputes was whether the "train by train" method rather than the group method should be followed. The evidence adduced and the consideration by the Commission of the comparative cost items as indicated by the decision make it appear that the case is not closely in point except to indicate the general type of proof that has been offered heretofore in rate cases.

In *Louisiana Public Service Commission v. United States et al.*, D. C. E. D. La., Baton Rouge D., 1954, 125 F. Supp. 180 affd. 348 U. S. 885, 75 S. Ct. 205, 99 L. Ed. 696, rehear. den. 348 U. S. 921, 75 S. Ct. 289, 99 L. Ed 723, the question of whether the findings of the Commission were supported by substantial evidence was summarily disposed of in a paragraph of the opinion It was pointed out that the record comprised nearly one thousand pages of testimony and a great number of exhibits. The court said:

> "It is sufficient to say that the Commission had before it a large volume of substantial evidence adduced by both sides of the controversy. In reaching its conclusions it was necessary for the Commission to weigh the evidence. That was a function which peculiarly addressed itself to the expertise of the Commission."

Whether the four hundred pages of testimony in the case at bar covered the same fields as the record in the Louisiana case cannot be determined from the opinion. Certainly, the opinion does not settle the point of comparability which is determinative here.

The case of *Mississippi Public Service Commission v. United States et al.*, D. C. S. D. Miss., Jackson D., 124 F. Supp. 809 (one judge dissenting), affd. 1955, 349 U. S. 908, 75 S. Ct. 584, 99 L. Ed. 1244, directly passed upon the question of the sufficiency of the evidence contrary to the contentions of the railroad company. I cannot agree with two indications in the opinion of Judge Mize, who spoke for a majority of the three-judge court: (a) that to justify the order of the Commission it must be shown both that the disparity between rates operates as a discrimination against interstate commerce *and* that it results in injury to interstate shippers; and (b) that in order to justify such an order there must be evidence distinguishing railroads' revenues, expenses and properties as between interstate and intrastate operations. On the first point, it is probable that the use of the conjunctive, with no support from the statute, 49 U. S. C. A., 13(4), was an inadvertence. On the latter proposition, the language, to be an accurate statement of the law, would have to contain the qualification that such separate treatment would be unnecessary only if the evidence failed to indicate the substantial similarity in both areas of all factors affecting rates within the doctrine of *Illinois*. As so interpreted, and considering the comments of Judge Mize on the evidence, or lack of it, as reasons why such comparable conditions were not established in the record, the decision is meaningful and compelling here.

In a similar case, appearing to be the latest to come before

the Supreme Court, *State of North Carolina et al. v. United State set al.*, D. C. E. D. N. C., 1955, 128 F. Supp. 718, affd. 1956, 350 U.S. 805, 76 S. Ct. 45 100 L. Ed 46, Judge Parker held for the Court that the ultimate findings of the Commission were supported by the evidence. Among these ultimate findings was one corresponding to a finding now before us that "'The conditions indicent to the intrastate transportation of freight in North Carolina are not more favorable than those incident to the interstate transportation in North Carolina and in the adjoining states." It was pointed out that the Commission has held a hearing for four days at which a great volume of testimony was received. But the sufficiency of the evidence was not an issue in this case. Judge Parker points out (p. 721), "* * * there is no contention that this finding of evidentiary facts is not amply supported by the evidence in the case. It is not necessary to repeat them here; but it is sufficient to say that they fully support the ultimate findings of the Commission * * * ." The opinion in the North Carolina case does suggest, however, that there was more specific and pertinent evidence of common factors affecting rates than was before the Commission in the present case. I do not mean to discount this decision as a respected authority, but because of differences appearing in the nature of the evidence and the fact that the significant issue here was not raised in that case, I do not deem it to be controlling.

II.

It is conceded that the ultimate findings of the Commission, quoted in a footnote to Judge Pickett's opinion, support the order, since they are couched in language designed to comport with the doctrine of *Illinois* and closely follow the

form of the ultimate findings approved in the *King* case. When the subsidiary findings of the Commissoin are looked to, however, a different picture is presented, even apart from evidentiary foundations or lack of them. Except for general references to the similarity of conditions as between intrastate and interstate commerce and certain unsupported conclusions discounting the effect of the affirmative evidence adduced on behalf of those opposing the increase, the facts set out in these subsidiary findings seem to recognize a substantial difference in conditions affecting rates. The report notes, among other things, that based on annual reports filed by four of the principal respondents with the Utah Commission, it appears that the interstate freight-service ratio (freight-service expense divided by freight-service revenue) and the intrastate density (ton-miles per mile of main-line track) are as to each respondent more favorable than correspondent systemwide figures, for 1953 as shown in the report. Such figures showing a very marked difference are set out in the report. But with reference to these, the Commission adds:

> " * * * The Union Pacific and the other respondents dispute the validity of the results obtained from the application of the formula. They assert that the reports do not reflect the actual cost of operation in Utah and therefore afford no basis for comparing operating costs. One of the principal objections to the density above shown is that they were obtained by using only the miles of main track. The density results would be substantially reduced if branch-line mileage were included. The comparisons thus made are of little significance in our determination here. A more important consideration is the positive showing made upon this record that the average unit expense of servicing Utah intrastate traffic is at least as great as that of servicing interstate traffic to and from Utah."

The evidentiary basis in the record of the statement that

a positive showing was made that the average unit expense of servicing Utah intrastate traffic is at least as great as that of servicing interstate traffic to and from Utah, cannot be found in the transcript, nor can I find it referred to in the briefs of the respondents. The record seems devoid of a comparison of conditions bearing on the reasonableness of rates, except for such common factors as were held in the first North Carolina case to be insufficient in the findings to support an order. It does not seem enough for the Commission to point to evidence of admitted differences in relevant factors and to say that the differences are not as great as those opposing the increases claim, without some basis in the record upon which to premise a finding that the differences are not substantial. The fact that in arriving at density figures combination main-line and branch-line track was not considered, does not seem to render the data insignificant, since the comparison was based upon main-line track nationally as well as locally. No facts appear which make the conclusion rational that the density figures would, on any theory, represent a factor having no substantial bearing on the reasonableness of the respective rates. It does not seem enough to say that the substantial effect was not as great as both main-line and branch-line figures had been presented, or to ignore that effect because of vague "average unit expense" figures, neither qualitatively nor quantatively compared therewith.

The subsidiary findings refer to an exhibit submitted by the Utah Commission portraying various operating statistics of the Denver and Rio Grande Western in Utah and Colorado, and for the entire system. This data on its face appears clearly to support a conclusion contrary to that arrived at by the Interstate Commerce Commission. The Commission dismisses the

evidence by reference to its action in *Kansas City Chamber of Commerce v. Atchison, T. & S. F. Ry Co.*, 164 I. C. C. 302, quoting its determination there, that the method of allocating revenue and expenses to a particular state was open to so many serious objections that the results obtained were unreliable. These objections were not developed in the evidence here, and no more reliable data were presented. In a similar summary manner, the study of the Utah Commission based on carload waybill statistics for 1952 showing the Utah intrastate ton-mile revenue as compared with the revenue per ton-mile on interstate shipments originated during that year, separated as to the principal commodity groups, was dismissed as "not determinative of the issues before us", due to "marked differences in lengths of haul as between intrastate and interstate traffic."

The prevailing opinion places stress upon the evidence that there is no discrimination in the handling of intrastate and interstate freight shipments, since they are both handled on the same trains, by the same crews, and by the same departments and it is stated that "Under such conditions, the contention of the plaintiffs has been rejected by the courts." I cannot find that any court has gone to the extent of holding that such common treatment furnishes a basis of applying intrastate rate increases in the absence of evidence showing similar conditions with reference to all factors affecting rates.

It is true that Mr. Kroll testified on behalf of the railroads that no distinction is made between the two types of traffic; that traffic is intermingled as between interstate and intrastate; that the same crews, the same clerks, and the same trains haul interstate and intrastate traffic; and that intrastate shipments and interstate shipments move

under "identically the same conditions". If an intrastate case can be made on such general testimony, largely within common knowledge, a hearing should not be necessary. Yet as far as the similarity of conditions affecting costs (as distinguished from actual rates charged without reference to cost) is concerned, this seems typical of testimony on which reliance must be placed if the order is upheld.

Other evidentiary matters mentioned in the prevailing opinion as a foundation for the Commission's conclusions are believed insufficient to permit plausible inferences to that effect in view of the record as a whole. Such disparity of rates as were shown are in both directions, and it is well established that mere disparity of rates establishes no sufficient basis for such an order. The railroads' need for additional revenue in general is beside the point. That the total yearly loss to the railroads caused by the failure to grant the requested increase in Utah was estimated at $1,880,347 means that a percentage increase applied to an existing rate theoretically will yield increased revenue. This has no probative force in regard to the problem at hand. To the extent that the record indicates that earnings on the railroads' investments in Utah are below the national average, their more favorable position locally from a cost standpoint in respect of density of traffic and the large percentage of intrastate freight carried in gondola cars from mines may not be ignored.

That economic conditions in Utah as of 1950 have improved greatly over the preceding period seems to have no determinative effect on a Section 13 case, since it is not the ability of intrastate traffic to pay more than its fair share that is involved, but whether the intrastate rate is so low as to be an economic burden on interstate commerce. Furthermore,

there seems much force to the plaintiffs' argument that Utah's present economic status, if anything militates against the Commission's conclusion since it suggests that in past years, while Utah's traffic has been essentially agricultural and relatively unproductive of revenue, its rates have moved up as a result of increases corresponding to nation-wide increases, and that now its economy has changed to predominantly mining and industry, the relative productivity of the traffic to the railroads would make the recent nation-wide increases fairly inapplicable intrastate. Be this as it may, and conceding that evidence of general economic conditions locally may be helpful on other phases of a rate case, they do not tend to show that all factors affecting rates are substantially the same as between interstate and intrastate commerce for the purpose of the doctrine announced in *Illinois*. The figures on percentage of return on net investment of the railroads in Utah cited in the majority opinion follow no pattern logically adaptable to the Commission's conclusion. Thus, the latest percentage, 3.82% in 1953, is more than in 1949 and more than in 1951 but less than in 1948, 1950 and 1952. Comparative revenue figures per ton-mile, covering interstate and intrastate traffic lumped together without taking into consideration differences affirmatively shown to exist in factors affecting the respective costs, again may have a bearing on other phases of a rate case, but furnish no rational basis for concluding that all factors affecting costs are substantially the same for interstate and intrastate traffic, for they go no further than to suggest, if anything, a disparity in rates which admittedly is not enough. *North Carolina v. United States*, 325 U. S. 507, supra.

Singly or in combination these factors, when viewed in context with the whole record, are believed not to supply a rational basis for the conclusion that the conditions attendant

the intrastate transportation of freight in Utah are not more favorable than those incident to interstate transportation between Utah and adjoining states.

III.

Three unwarranted assumptions would seem necessary to logically sustain the decision of the Commission. One would be that prior to the application of the 15% increase nationwide, intrastate and interstate rates in Utah were in balance with reference to the cost-revenue factor so that each furnished its fair share of the total revenue needs. If this presumption could be applied in the absence of evidence in the record to support it, or in view of the kind of evidence before us, the making of a rate case would be exceedingly simple, i. e. (a) the rates, intrastate and interstate in Utah prior to the application of the nation-wide increase affecting interstate commerce provided in Ex Parte 175 were reasonably in balance; (b) interstate rates have been increased 15%, and thus, intrastate rates are out of line by this percentage; (c) by increasing intrastate rates 15% the two classes are restored to balance so that each furnishes its fair share of general revenue requirements.

Another presumption would have to be indulged: that between the time of the last simultaneous increase, or at least subsequent to the increase under Ex Parte 175, no new factors affecting costs have developed to throw the presumed balance out. The basis of this is furnished, if at all, by the testimony concerning the intermingling of interstate and intrastate traffic, which, as has been pointed out, is insufficient.

And there is another assumption that is required if the deficiencies are to be avoided. On the whole record it appears

without dispute that there are different factors operating in progressive measure to influence intrastate rates as distinguished from rates intrastate from the standpoint of the revenue-cost ratio. The rapid development of the industrial and mining economy of Utah in relation to the nation as a whole, and its established incidents, including increasing traffic density, underscore the dissimilar conditions. No evidence to disprove this divergence nor to define, limit or measure its effect appears. The Commission in its report, however, as above pointed out, dismisses the significance of these factors and other studies directly measuring the differences, not on the basis of any opposing studies or evaluations introduced at the hearing but, for example, in one instance by a general conclusion as to comparative unit costs finding no support in the evidence, and in another instance by referring to its determination in an entirely different case.

May it be assumed, without evidence in the record which would furnish a rational basis in and of itself, that as an agency presumably equipped or informed by experience to deal with a specialized field of knowledge, its conclusions are valid and unassailable here? If this be so, the pattern for virtually automatic application of nation-wide rate increases to intrastate commerce would be complete.

But no decision of the Supreme Court countenances any such result. *Interstate Commerce Commission v. Louisville and Nashville Railroad Company*, 227 U. S. 88, 33 S. Ct. 185, 57 L. Ed. 431, expressly rejects the contention that "expertness" may take the place of evidence. As recognized by Judge Pickett, *Universal Camera Corp. v. NLRB*, 340 U. S. 474, 71 S. Ct. 456, 95 L. Ed. 456, authorizes the Court to set aside an order when it cannot conscientiously find that the evidence supporting it is

substantial, when viewed in the light that the record furnishes, including the body of evidence opposed to the agency's views. In a recent commentary on the authorities in this field appearing in Harvard Law Review, April 1956, P. 1020, et seq., Professor Louis L. Jaffee expresses it as follows (P. 1027):

> " * * * Judicial review is designed, as has been said, to make sure that there is record evidence which provides a rational or logical basis for the finding and for the consequent presumption that the finding was in fact the product of reasoning from evidence. This must mean evidence in the case and in the context of the case. To abstract out of a case that part of the evidence which can be made to support a conclusion is to imagine an abstract case, a case that was never tried. * * * "

And he further comments (p. 1040):

> "Courts usually demand that the particular agency convince the Court that its 'putative' expertness is relevant to the finding in question and even then takes this expertness as but one factor in the agency decision which must run the gauntlets of its common sense."

Chief Justice Hughes in *Consolidated Edison Co. v. NLRB*, 305 U. S. 197, 58 S. Ct. 852, 82 L. Ed. 1287, says that substantial evidence means "such relevant evidence as a reasonable man might accept as adequate to support the conclusion."

The requirements of the Interstate Commerce Act, 49 U.S.C.A. 13(4), that a "full hearing" be had, coupled with the provisions of the Administrative Procedure Act, 5 U. S. C. A. 1001, et seq., negative the idea that the Interstate Commerce Commission, without evidence of substantial similarity of all factors affecting rates, and in the face of evidence showing dissimilar conditions, can, solely on the basis of its previous experience and authority, ignore the record and come to a de-

termination independent of it. See also *Amarillo-Borger Express, Inc., et al., v. United States,* D. C. N. D., Tex., Dallas D., 1956, 138 F. Supp. 411. The legal effect of evidence is a question of law and a finding without evidence is beyond the jurisdiction of the Commission. Where the party affected is entitled to a hearing, the Interstate Commerce Commission cannot base an order establishing a rate on the information it has gathered for general purposes; the order must be based on evidence produced in the particular proceeding. *Interstate Commerce Commission v. Louisville and Nashville Railroad Company,* supra.

In reading the transcript before the Interstate Commerce Commission one may detect impatience on the part of some of the witnesses espousing the increase at any suggestion that they were called upon to produce a quantum of proof going to anything beyond an intimate connection between interstate and intrastate traffic in Utah and the differences in rates without the application of the 15% increase to intrastate traffic. In the argument before this Court the thesis was pursued that on the basis of common knowledge as to conditions in every state in the Union it could be said that all factors influencing rates were the same, and it was intimated that without evidence these matters of common knowledge would themselves justify the application of similar increases to the two classes of traffic. I fear that this is where the order of the Interstate Commerce Commission is leading us; that, henceforth, if such orders be approved now that the problem has been squarely raised (as it does not appear to have been before) there will be no use for hearings before either the state commissions or the Interstate Commerce Commission with regard to intrastate rates, except as a mere formality in approval of nation-wide increases.

What is substantial evidence is a matter on which there can be understandable differences of opinion for at best this is not a precisely measureable quantity or quality of evidence. However, it is the duty of each member of the court to determine whether minimum jurisdictional requirements have been met. I do not believe that they have been here, and with due regard for the considered majority view to the contrary, there can be no question at least but that the issue is worthy of focused consideration. The amount of money involved is considerable. It is vital that the railroads' rates, both intrastate and interstate, be adequate, and that the former should bear its full share of general revenue needs, but the relationship between state and federal governments is also important and delicate; and it is important that no rules be laid down which will impair that relationship contrary to the principles which Congress in the light of court decisions has laid down. To thus regard it will place no roadblock in the path of the railroads in obtaining adequtae rates intrastate. It will establish some signals which I believe should be observed for the protection of our entire system. It neither compromises nor weakens legitimate federal power in the field of commerce to expect that the basis for the exercise of that power be shown affirmatively by substantial evidence. Such insistence may appear to be a protection solely to the public one day, to the state on another, or to the railroads on yet another; but the by-passing of such requirement can, in the long run, injure all and may, through reaction, impair the power itself.

I would vacate the order of the Interstate Commerce Comsion and enjoin the application of the increased intrastate rates until, if at all, substantial evidence is presented before the Interstate Commerce Commission furnishing a rational basis for the conclusion that conditions under which intrastate and

interstate traffic move in Utah are substantially the same with respect to all factors bearing on the reasonableness of the rates.

Dated this 23rd day of May, 1956.

/s/ A. SHERMAN CHRISTENSON,
United States District Judge.

Filed in United States District Court, District of Utah
June 18, 1956

O. K. Clay, Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

CIVIL ACTION NO. C-8-56

PUBLIC SERVICE COMMISSION OF UTAH and UTAH CITIZENS RATE ASSOCIATION,

Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,

Defendants;

and

UNION PACIFIC RAILROAD COMPANY, THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, SOUTHERN PACIFIC COMPANY, THE WESTERN PACIFIC RAILROAD COMPANY, BAMBERGER RAILROAD COMPANY, THE OGDEN UNION RAILWAY AND DEPOT COMPANY, SALT LAKE-GARFIELD AND WESTERN RAILROAD COMPANY, TOOELE VALLEY RAILWAY COMPANY, and UTAH RAILWAY COMPANY,

Intervenors.

FINDING OF FACT AND CONCLUSIONS OF LAW

The above-entitled matter came on regularly for hearing on April 9, 1956, before a statutory three-judge court consisting of Hon. John C. Pickett, Judge of the United States Court of Appeals for the Tenth Circuit, and the Hon. Willis W. Ritter and Hon. A. Sherman Christenson, District Judges of the United States District Court for the District of Utah; the plaintiffs being represented by Raymond W. Gee, Assistant Attorney General of the State of Utah, Calvin L. Rampton and

Keith E. Sohm; the defendants being represented by A. Pratt Kesler, United States Attorney for the District of Utah, and C. H. Johns, Attorney for the Interstate Commerce Commission; and the intervening railroads being represented by W. H. Fitzpatrick and A. U. Miner; and the Court having received in evidence and considered the record of evidence submitted to and produced before the Interstate Commerce Commission, and having heard the arguments of counsel and considered their respective briefs submitted in connection therewith, and being fully advised in the matter, now make the following:

FINDINGS OF FACT

1. The plaintiff Public Service Commission of Utah is a statutory commission created by and existing under the laws of the State of Utah, and is vested with power and authority over intrastate freight rates of common carrier railroads within the State of Utah, except as such rates may cast an undue burden upon or discriminate against interstate commerce, and except as such rates may therefore be regulated and controlled by the Interstate Commerce Commission under Section 13 of the Interstate Commerce Act, pursuant to which act the orders involved herein were issued by the Interstate Commerce Commission; the plaintiff Utah Citizens Rate Association is a non-profit corporation organized under the laws of the State of Utah, having as its members various shippers of railroad freight within and from the State of Utah.

2. That during the year 1951 in a proceeding designated as "Ex Parte 175", wherein Class I Railroads of the United States sought an overall increase in interstate freight rates, the Interstate Commerce Commission undertook an investiga-

tion with respect to the level of such interstate freight rates, and after extended hearings and interim precentage increases, said commission on April 11, 1952, granted to all of said railroads increases totalling 15 per cent on interstate freight rates, such increases being subject to certain exceptions and hold-downs.

3. Railroads operating in the State of Utah made application to the Public Service Commission of Utah requesting increases in intrastate freight rates comparable to and in the same percentage amounts as had been granted by the Interstate Commerce Commission on interstate rates in "Ex Parte 175." After hearing thereon, the Utah Commission refused to grant the requested intrastate increases, one of the main bases of the Utah Commission's refusal being that the railroads had made no separation between their interstate and intrastate costs and expenses, the railroads contending that such items of expense were so inextricably bound together as to be impractical, if not impossible, of separation.

4. Section 13 proceedings were instituted by the railroads before the Interstate Commerce Commission; and pursuant thereto, the Interstate Commerce Commission, under its Docket No. 31484, entered into an investigation of Utah intrastate freight rates and charges. Commencing on May 20, 1954, a full and complete hearing was had before an Interstate Commerce Commission examiner, at which hearing a great amount of evidence, both oral and documentary, was introduced both by the railroads and by protestants who appeared, including the plaintiffs herein. After hearing and co. idering the same, the said examiner on March 11, 1955, issued a report and order in which he recommended to the Interstate Commerce Commission that it issue its order requiring that freight rates intra-

state in Utah be raised as requested, with a few minor exceptions. The plaintiffs herein thereupon filed with the Interstate Commerce Commission their exceptions to the report and order as proposed by the examiner. Pursuant to request of the parties, oral arguments, with respect to said proposed order and said exceptions taken thereto, were heard before the Interstate Commerce Commission on July 11, 1955.

5. Under date of October 17, 1955, the Interstate Commerce Commission issued its report and order in said matter, wherein it found, with certain exceptions, that the Utah intrastate rates and charges were abnormally low; that conditions incident to intrastate transportation in Utah were not more favorable than those incident to interstate transportation in said state; that traffic thereunder failed to produce its fair share of earnings required to yield the railroads sufficient revenue to provide adequate and efficient railway transportation service to accomplish the purposes of the Interstate Commerce Act, and that Utah intrastate rates cast an undue burden upon interstate commerce. The Interstate Commerce Commission also found and ordered and directed that the undue burden and unjust discrimination should be removed by applying to the Utah intrastate rates and charges on like intrastate traffic the percentage increases authorized on interstate traffic in Ex Parte 175, with the proviso "that increases may not be made in intrastate rates to levels higher than the interstate rates on like traffic to and from Utah for like or greater short line distances over the same lines of railroad, except in instances where the interstate rates, and not the intrastate rates, are designated as published to meet motor carrier competition."

6. Said order of the Interstate Commerce Commission further provided that the Utah Commission would be allowed

thirty days to put said increases into effect; and unless the Utah Commission notified the Interstate Commerce Commission within the thirty days that it would authorize and permit such increases, that a further order would be issued by the Interstate Commerce Commission, putting said rates into effect.

7. Petition for rehearing was filed by plaintiffs and denied by the Interstate Commerce Commission.

8. The Utah Commission did not authorize the increases within the time provided in said order, nor within an authorized extension of said time; and under date of February 8, 1956, the Interstate Commerce Commission issued its further order, wherein the railroads were directed by said Interstate Commerce Commission to put increased rates in effect in Utah pursuant to its order of October 17, 1955, and to publish and file its tariffs, and by such tariff issuance to make the 15 per cent increase effective on Utah intrastate freight rates as of March 13, 1956, upon one day's notice to the public and the Interstate Commerce Commission.

9. The present suit was brought by Public Service Commission of Utah and Utah Citizens Rate Association against United States of America and Interstate Commerce Commission under the provisions of Title 49, U. S. C. A., Section 17(9) and Title 28, U.S.C.A., Sections 1336, 1398, 2284, 2321, 2322, 2323, 2324, 2325 and pursuant to Title 5, U. S. C. A., Section 1009, to enjoin, annul and set aside the report of the Interstate Commerce Commission dated October 17, 1955, and the order of the Interstate Commerce Commission dated February 8, 1956. The railroads operating in the State of Utah, who had been named as parties respondent in the Commission's proceedings in Docket No. 31484, intervened in the defense of the report and orders.

10. On March 9, 1956, the United States District Court for the District of Utah, both the Hon. Willis W. Ritter and the Hon. A. Sherman Christenson concurring therein, issued a temporary restraining order restraining the Interstate Commerce Commission and the intervening railroads from putting such increased rates into effect intrastate within the State of Utah pending hearing upon the merits before a full three-judge court. Prior to commencing trial on the merits on April 9, 1956, it was stipulated by all parties that such restraining order might remain in effect as an interlocutory injunction pending hearing and decision upon the merits, and it was so ordered by this Court.

11. A three-judge court was convened pursuant to statutory provisions (Title 28, Sections 2284 and 2325). The record upon which the Commission's report and order of October 17, 1955, and February 8, 1956, are based, was introduced in evidence and considered by the court in reaching its decision.

12. At the opening of the trial the plaintiffs offered to introduce in evidence the record of proceedings made before the Public Service Commission of Utah in the hearing held by it upon the railroad's request to increase intrastate freight rates, prior to the 13th Section hearing before the Interstate Commerce Commission. Defendants and intervenors objected to the introduction of such record as made before the Utah Commission, because no part thereof had been introduced in any of the proceedings had before the Interstate Commerce Commission in said 13th Section hearing. The Court reserved ruling upon the admissibility of the latter record, and the Court now finds from the record as introduced before the Interstate Commerce Commission that no part of such proceedings before the Utah Commission were introduced or offered in

evidence in the proceedings before the Interstate Commerce Commission, and the Court therefore finds that said record as made before the Utah Commission is irrelevant and not proper to be considered herein; and this Court in arriving at its conclusions herein has not considered the same.

13. The plaintiffs made no claim that the findings of the Interstate Commerce Commission did not support the conclusions of, and the orders as issued by the Interstate Commerce Commission. The plaintiffs asserted that the findings of the Interstate Commerce Commission were not supported by substantial evidence.

14. In finding that existing Utah intrastate rates cast an undue burden upon and discriminated against interstate commerce, the Interstate Commerce Commission did not rely entirely upon the disparity in rates. The evidence in the record shows that there is no distinction in the handling of interstate and intrastate freight shipments. They are both handled on the same trains and by the same crews; the same accounting department, the same traffic department, and the same facilities are used in the dispatch and receipt of both shipments. The railroads' general need for additional revenue was established in Ex Parte 175. The evidence produced before the Interstate Commerce Commission in this case was that the earnings on investments of Utah railroads are below the national average. The economic ability of Utah traffic to bear the 15 per cent increase found necessary in Ex Parte 175, was shown. The economic conditions in Utah in 1950 had improved greatly over the preceding period, both actually and relatively. Wages were higher than the national average; higher wages and costs of operation which the railroads had to pay in Utah and elsewhere, were shown; there had been a substantial increase in property investments of

railroads operating within the state, while there was a decrease in net operating income. The cost of handling an intrastate shipment was shown to be as great, if not greater, than the handling of interstate freight. The record shows that in 1952 the revenue per ton mile of railroads in the United States was 1.43c; in the Western District, 1.393c; and in the Mountain Pacific States, which includes Utah, 1.398c per ton mile; and in the State of Utah, on intrastate and interstate traffic, 1.258c per ton mile. The total annual loss to the railroads caused by the failure to grant the requested increase in Utah was estimated by both plaintiffs and defendants, including the intervening railroads, to be approximately $1,880,347.

15. The report and findings of the Interstate Commerce Commission herein (297 I. C. C. 87) is hereby adopted by reference and made a part of these findings of fact. The findings in that report and the orders entered thereunder are entirely proper and within the scope of the statutory authority of the Commission, and such findings of the Interstate Commerce Commission are adequately supported by substantial evidence.

16. Plaintiffs' contention that the order relating to the Utah intrastate rates is invalid because the flat percentage increase of 15 per cent in Ex Parte 175, with a saving clause, was contrary to law, is without merit and amounts to a collateral attack upon such Ex Parte 175 proceedings.

17. There is no basis in fact which would justify the granting of an injunction as prayed for.

From the foregoing findings of fact the Court make the following:

CONCLUSIONS OF LAW

1. This Court his jurisdiction to determine the lawfulness of the report and orders of the Interstate Commerce Commission here involved.

2. The Interstate Commerce Commission, in making such findings and report and orders as based thereon, was acting within the authority granted to it by the Congress of the United States in the Interstate Commerce Act as amended, and the orders of the Commission are not beyond its statutory powers in any respect, are not arbitrary and are not based on findings or conclusions which are erroneous in any respect.

3. The validity of the Commission's order in Ex Parte 175 is not subject to a collateral attack herein.

4. The costs and expenses incident to the handling of intrastate and interstate traffic are intimately, if not inextricably, bound together; and it is not necessary that a separation be made between such costs and expenses as to interstate and intrastate traffic for the purposes of the Commission's investigation and the order as entered by it herein.

5. The Commission's findings are adequate to support its order.

6. The findings, report and orders of the Interstate Commerce Commission are supported by substantial and probative evidence.

7. The Commission's report and order of October 17, 1955, and its orders dated January 9, 1956, and February 8, 1956, are valid in all respects.

8. The interlocutory injunction as granted upon stipulation of the parties on April 9, 1956, should be dissolved.

9. The complaint of plaintiffs should be dismissed with prejudice and at plaintiff's costs.

Dated this 13 day of June 1956.

JOHN C. PICKETT,
Circuit Judge

WILLIS W. RITTER,
District Judge

Filed in United States District Court, District of Utah
June 18, 1956

O. K. Clay, Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

CIVIL ACTION NO. C-8-56

PUBLIC SERVICE COMMISSION OF UTAH and UTAH CITIZENS RATE ASSOCIATION,

Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,

Defendants;

and

UNION PACIFIC RAILROAD COMPANY, THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, SOUTHERN PACIFIC COMPANY, THE WESTERN PACIFIC RAILROAD COMPANY, BAMBERGER RAILROAD COMPANY, THE OGDEN UNION RAILWAY AND DEPOT COMPANY, SALT LAKE-GARFIELD AND WESTERN RAILROAD COMPANY, TOOELE VALLEY RAILWAY COMPANY, and UTAH RAILWAY COMPANY,

Intervenors.

FINAL DECREE

This cause came on regularly for hearing on April 9, 1956, before the Hon. John C. Pickett, Judge of the United States Court of Appeals for the Tenth Circuit, and the Hon. Willis W. Ritter and the Hon A. Sherman Christenson, District Judges of the United States District Court for the District of Utah, who constituted a special statutory three-judge court which was convened pursuant to the provisions of Title 28, U. S. C. A., Section 2325, upon a complaint brought by plaintiffs above named, to enjoin, annual and set aside a decision, report and

orders of the Interstate Commerce Commission in a proceeding entitled "Utah Intrastate Freight Rates and Charges, Docket No. 31484" (297 I. C. C. 87); the matter was heard upon the evidence taken before the Interstate Commerce Commission and the report and orders of the Interstate Commerce Commission, as well as upon arguments and briefs of counsel for all parties; and the cause having been submitted for final decree, and the Court having made its findings of fact and conclusions of law, which are filed herewith.

NOW, THEREFORE, upon the basis of said findings of fact and conclusions of law, and for the reasons set forth by the majority opinion of the Court heretofore filed, it is, upon motion of counsel for the defendants and counsel for the intervening railroads.

ORDERED, ADJUDGED AND DECREED that the interlocutory injunction heretofore entered and granted in the above-entitled cause on April 9, 1956, be, and the same is set aside and dissolved. The request of plaintiffs for a permanent injunction and order annulling and setting aside the orders of the Interstate Commerce Commission is denied, and the plaintiffs' complaint is hereby dismissed with prejudice and with costs to be assessed against the plaintiffs.

Dated this 13 day of June 1956.

JOHN C. PICKETT
Circuit Judge

WILLIS W. RITTER
District Judge

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APPELLANTS' BRIEF

In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 15

PUBLIC SERVICE COMMISSION OF UTAH and UTAH CITIZENS RATE ASSOCIATION,
Appellants,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,
THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY,
UNION PACIFIC RAILROAD COMPANY,
SOUTHERN PACIFIC COMPANY,
THE WESTERN PACIFIC COMPANY,
UTAH RAILWAY COMPANY,
BAMBERGER RAILROAD COMPANY,
TOOELE VALLEY RAILWAY COMPANY,
SALT LAKE, GARFIELD AND WESTERN RAILWAY COMPANY,
THE OGDEN UNION RAILWAY AND DEPOT COMPANY,
Appellees.

ON APPEAL FROM THE UNITED STATES DIST[redacted] COURT
FOR THE DISTRICT OF UTAH

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APPELLANTS' BRIEF

In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 15

PUBLIC SERVICE COMMISSION OF UTAH and UTAH CITIZENS RATE ASSOCIATION,
Appellants,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,
THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY;
UNION PACIFIC RAILROAD COMPANY,
SOUTHERN PACIFIC COMPANY,
THE WESTERN PACIFIC COMPANY,
UTAH RAILWAY COMPANY;
BAMBERGER RAILROAD COMPANY,
TOOELE VALLEY RAILWAY COMPANY,
SALT LAKE, GARFIELD AND WESTERN RAILWAY COMPANY,
THE OGDEN UNION RAILWAY AND DEPOT COMPANY,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

A

OPINIONS IN DISTRICT COURT

This is an appeal from a decision of the United States Court for the District of Utah. The prevailing opinion of Circuit Judge Pickett and Judge Ritter and the dissenting opinion of

Judge Christenson are reported at 146 Fed. Supp. 803 and are reproduced at pages 39 to 65 of the printed record.

B

BASIS OF JURISDICTION

The jurisdiction of this Court is evoked upon the following grounds:

(1) This was an action brought by the appellants for the purpose of annulling and setting aside an Order of the Interstate Commerce Commission under the provisions of Title 49, U.S.C., Section 19 (9) and Title 28 U.S.C. Sections 1366, 1398, 2284, 2321, 2322, 2323, 2324 and 2325 and pursuant to Title 5, U.S.C. Section 1009. The action thus commenced was required by the statutory provisions above quoted to be heard and determined by a District Court of three judges.

(2) Title 28, U.S.C. 1253 covers jurisdiction of this Court to entertain a direct appeal from such final order. Said Title 28, U.S.C. 1253, provides as follows:

> "Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges. June 25, 1948, c. 646, 62 Stat. 926."

(3) The matter was heard by a District Court of three judges. Following the trial of the issues the Court, on the 13th day of June, 1956 made its Findings of Fact, Conclusions of Law and Final Decree denying the permanent injunction sought by the appellants and setting aside the interlocutory injunction theretofore entered in the matter. The Findings of Fact, Con-

clusions of Law and Final Decree were filed and entered in the office of the Clerk of the United States Court for the District of Utah on the 18th day of June, 1956. Appellants' notice of appeal to the Supreme Court of the United States was filed with the United States District Court for the District of Utah on the 10th day of July, 1956. Probable jurisdiction was noted on November 5, 1956. The printed record was received by counsel for the appellants on September 9, 1957.

C

STATUTES INVOLVED

This appeal involves the power of the Interstate Commerce Commission to regulate intrastate rates under the provisions of 49 U.S.C.A. 13 (3) (4). These statutory sections read as follows:

> *"Sec. 13, par. (3) Investigation involving State regulations; conference of State and interstate commissions.* Whenever in any investigation under the provisions of this chapter, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State, the commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this chapter with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the commission; and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from time to time, to hold joint hearings with any such State regulating

bodies on any matters wherein the commission is empowered to act and where the rate-making authority of a State is or may be affected by the action taken by the commission. The commission is also authorized to avail itself of the cooperation, services, records, and facilities of such State authorities in the enforcement of any provision of this chapter.

"*Sec.* 13, *par.* (4) *Duty of commission where State regulations result in discrimination.* Whenever in any such investigation the commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is forbidden and declared to be unlawful it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding."

D

QUESTIONS FOR REVIEW

The questions presented for review in this appeal are as follows:

(1) Were the findings of the Interstate Commerce Commission challenged in the above entitled case supported by substantial evidence?

(2) May the court sustain the Interstate Commerce Commission's Order, without further evidence on the following:

(a) The presumption that interstate and intrastate rates were in proper relationship prior to the increase.

(b) The matter of common knowledge that intrastate and interstate traffic are intermingled on the same trains.

(3) May the Interstate Commerce Commission and the Court ignore the evidence of the protestants which detracts from the evidence of the railroads.

(4) May an attack be made in this action upon the legality of the Interstate Commerce Commission Order in Ex Parte No. 175.

E

STATEMENT OF THE CASE

This was an action brought by the Public Service Commission of Utah and the Utah Citizens Rate Association to set aside an order of the Interstate Commerce Commission granting an increase of 15% in Utah intrastate railroad freight rates.

In a proceeding entitled Increased Freight Rates 1951, which will hereinafter be referred to as Ex Parte 175, the Class I railways of the United States made application to the Interstate Commerce Commission for an increase in interstate freight rates and charges. Three separate orders were issued in this proceeding. In the first one the railroads were granted an increase of 2% on all basic interstate rates and charges with certain exceptions. In the second order, the western railroads were authorized to make an additional 4% increase and the eastern roads an additional 7% increase. In the third order, which was dated April 11, 1952, and which is reported at 284

I.C.C. 589, the western roads were granted authority to take an additional 9% and the eastern roads an additional 6%. Thus, the total increase granted to all railroads on interstate rates in Ex Parte 175 was 15%. As pointed out above this 15% increase was subject to certain exceptions and hold-downs, but generally applied to all interstate rates.

In June of 1951 the Class I railways operating within the State of Utah made application to the Public Service Commission of Utah for an increase in intrastate rates in the same percentage as that being sought from the Interstate Commerce Commission on interstate rates in Ex Parte 175. Hearing was had thereon on October 29, 1951 at Salt Lake City, Utah. At the close of the hearing the Public Service Commission of Utah ruled that the railroads had not produced evidence to justify the increase but ordered that the record should be left open for a period of 60 days to allow the railroads to furnish the required evidence. No further evidence was furnished at this time and no final order was entered in the case by the Utah Commission. At the time the second increase was given in interstate rates in Ex Parte 175, the railroads filed a further petition with the Utah Commission. No hearing was ever had on this second petition. Following the final order by the Interstate Commerce Commission in Ex Parte 175, the railroads filed a third petition with the Utah Commission requesting the full increase of 15% on Utah intrastate rates with certain minor exceptions. This third petition was heard fully by the Utah Commission at hearings on the 17th day of November, 1953 and the 11th day of December, 1953. After the case was heard and submitted, the Commission ruled that the railroads had failed to present evidence from which the Commission could determine whether or not the intrastate operation of the applicant railroads produced revenue sufficient to provide a fair share of the overall revenue

requirements of the applicant railroads. This order was made "without prejudice to applicants to apply for further hearing for the presentation of further evidence."

The Public Service Commission of Utah did not and has never refused to authorize the petitioners to increase their intrastate rates and charges if the railroads can produce evidence justifying such increases. No appeal was made to the Supreme Court of Utah from this order of the Public Service Commission of Utah.

Following the hearings before the Public Service Commission of Utah and the order above referred to, the petitioning railroads filed a petition with the Interstate Commerce Commission under the provisions of 49 U.S.C. 13. (3). (4). Pursuant to this petition the Interstate Commerce Commission entered into an investigation of the Utah intrastate rates under I.C.C. Docket No. 31484. All common carrier railroads operating in the State of Utah were made respondents in the proceedings and the Public Service Commission of Utah, the Utah Citizens Rate Association and other shippers within the State of Utah appeared as parties protestant.

Hearings in I.C.C. Docket No. 31484 were conducted at Salt Lake City, Utah on the 20th and 21st days of May, 1954 before Interstate Commerce Commission Examiner Myron Witters. Evidence was presented by the railroads and by the protestants. The complete record of the hearing has been introduced as evidence in this proceeding. This matter was held under consideration by the examiner until the 11th day of March, 1955 when a proposed report and order was served upon the plaintiffs herein. The report and order recommended that the Interstate Commerce Commission should find that the existing Utah intrastate rates and charges were abnormally

low and that traffic thereunder failed to produce its fair share of earnings required to yield the respondent railroads' required revenue, and further that the burden thus cast upon interstate commerce was undue in and to the extent that the intrastate rates and charges were less than those recommended in the report.

The plaintiffs in this action filed exceptions to the examiner's report and argued the same orally. On October 17, 1955 the Interstate Commerce Commission issued a report in Docket No. 31484, which report carried into effect the recommendations of the examiner. Interstate Commerce Commissioner Howard Freas dissented in part from the report. A motion for reconsideration was made and denied and the increased intrastate rates within the state of Utah were, by order of the Interstate Commerce Commission date February 8, 1956, ordered into effect as of the 13th day of March, 1956.

The plaintiffs thereupon filed this action in the United States Court for the District of Utah to set aside the orders of the Interstate Commerce Commission. After hearing, a temporary restraining order was entered holding the matter in abeyance until hearing on the merits of the case. A trial before a three judge court was held on the 9th day of April, 1956. By stipulation of the parties the temporary restraining order was continued in effect pending final decision of the case. On the 13th day of June, 1956 the United States District Court for the District of Utah denied the permanent injunction and set aside the temporary restraining order. Judge Christenson dissented. This appeal is taken from the action of the United States District Court.

EVIDENCE BEFORE THE INTERSTATE COMMERCE COMMISSION

The record of the hearing before the Interstate Commerce Commission was introduced in the United States District Court as Exhibits 2 and 2A (R. 88, 138-748). These exhibits consisted of the transcript of the testimony and 80 exhibits presented before the Interstate Commerce Commission, which are reproduced in full in the printed record. Hereafter in this brief in making reference to exhibit numbers, counsel will refer to the exhibit number before the Interstate Commerce Commission. The exhibits are identified by those numbers in the printed record.

THE RAILROADS' EVIDENCE

The railroads called as a witness Mr. Herman Kroll (R. 140), a statistician with the Western Traffic Association. Mr. Kroll testified generally about economic trends in Utah and the Western states generally and also testified regarding the systemwide revenue needs of the five principal class I railways operating in and through the state of Utah. Mr. Kroll introduced exhibits 1 (R. 153, 419-426) and 2 (R. 153, 426-433). Exhibit 1 deals with the improved economic conditions in the west and the state of Utah. Exhibit 2 shows statistics on a composite basis systemwide for the Denver & Rio Grande Western, Southern Pacific, Union Pacific, Utah, and Western Pacific railroads. It also contains certain price indexes on railroad supplies. Nowhere did Mr. Kroll break down the operating figures of any roads between intrastate and interstate operations. He testified that such a breakdown was impossible to make. He further testified (R. 143) that the average revenue per ton mile for railroads within the state of Utah was lower than

the national average or the average of the western states. However, he admitted on cross-examination (R. 366) that traffic in the state of Utah is much more heavily weighted percentage wise in favor of low cost, low revenue products of the mines than is the case either nationally or in the western district. Mr. Kroll testified that assuming no diversion of traffic a 15% increase in Utah intrastate rates would result in additional revenue to the railroads of $1,870,000 per year (R. 163).

Mr. G. M. Watson, freight traffic manager of the Union Pacific Railroad was called as a witness (R. 167) and introduced Exhibits 3, 4, and 5 (R. 190, 434-450) showing a history of Utah intrastate increases. He also introduced Exhibits 6 to 36 (R. 190, 451-500) inclusive, these exhibits being maps and tables showing movements of various commodities both intrastate within the state of Utah and interstate where Utah was either the point of origin or destination. Mr. Watson testified on cross-examination (R. 207) that the only purpose of these exhibits was to show that there was actually freight being moved under the rates which they propose to increase, and not to show any comparison between interstate and intrastate rates.

Mr. Waldo A. Gillette, an officer of Monolith Portland Midwest Company, a cement producer at Laramie, Wyoming, was called (R. 218) and testified in regard to preferences resulting to intrastate shippers over interstate shippers as a result of the Utah Commission's refusal to increase Utah intrastate rates. The Interstate Commerce Commission held, however, that the railroads failed to establish preference within the terms of 49 U.S.C.A. 13 (4). The testimony of Mr. Gillette, therefore, is not relevant to this appeal.

The railroads called as witnesses Mr. Herman S. Jensen

(R. 242), an operating man from the Union Pacific Railroad and Mr. R. K. Bradford (R. 317), Vice President of Denver & Rio Grande Western railroad, both of whom testified to the effect that the railroads handle interstate and intrastate traffic without distinction intermingling it on the same trains and handling it with the same crews.

Mr. T. K. Early (R. 248) testified generally regarding the movement of coal by the Denver & Rio Grande Railroad and gave some testimony in regard to coal rates.

THE PROTESTANTS' EVIDENCE

Mr. Robert Crandall, a statistician for the Public Service Commission of Utah, introduced three exhibits. Exhibit No. 64 (R. 311, 548) compares operating ratios and ton miles per mile of track within the state of Utah and for the systems as a whole of Denver & Rio Grande, Southern Pacific, Union Pacific and Western Pacific. In each instance the operating ratios are lower and the density figures higher within the state of Utah than for the systemwide operation of the lines in question. Exhibit No. 65 (R. 311, 549) shows statistics for the Denver & Rio Grande Western Railroad comparing the State of Utah, State of Colorado and the system as a whole for various railroad operating indexes. Exhibit No. 66 (R. 311, 550) shows comparative revenue per ton mile on Utah intrastate traffic and interstate traffic originating in Utah as follows:

Products	Revenue Per ton-mile	
	Intrastate Cents	Interstate Cents
Agriculture	2.57	1.14
Animals	4.15	2.71
Mines	1.06	.74
Manufactured Miscellaneous	3.63	1.52
Total of all Products	1.21	1.06

Mr. H. E. Colwell (R. 368), traffic manager for the Utah Citizens Rate Association, introduced two exhibits. Exhibit No. 74 (R. 375, 735) shows rates on steel intrastate within Utah from Geneva to Salt Lake City as compared with rates from Kaiser, California to Los Angeles, California and Pittsburgh, California to San Francisco, California. The Utah mileage is somewhat shorter than the California mileages and yet the Utah rates, without the 15% increase, are substantially higher than are the California rates, including the 15% increase. Exhibit No. 75 (R. 375, 736-738) compares Utah intrastate rates on selective commodities with interstate rates on the same commodities for comparable mileage. This exhibit generally shows that on the commodities selected, which the witness stated were typical, (R. 372) the Utah intrastate rates are higher without the increase than are the interstate rates including such increase.

Mr. T. E. Thain (R. 376), accountant for the Utah Public Service Commission introduced Exhibit No. 76 (R. 378, 739) which shows that in the year 1953 Bamberger Railroad Company, one of the petitioning railroads which operates entirely within the state of Utah, showed a rate of return of 15.98%.

Mr. H. L. Balser (R. 353), President of Bamberger Railroad Company, subpoenaed by the protestants, testified that although Bamberger Railroad carried by interline a great deal of interstate freight its division of revenue on this interstate rate is based upon its intrastate rates as a maximum (R. 356).

Mr. Miles P. Romney (R. 383) of the Utah Mining Association, Mr. B. P. Banley (R. 323) of the Utah Coal Producers Association and Mr. T. C. Taylor (R. 400), Traffic Manager of Ideal Cement Company, testified regarding railroad rates as affecting their particular commodities.

SUMMARY OF ARGUMENT

I

Before the Interstate Commerce Commission has jurisdiction to prescribe an intrastate rate, the basis of that jurisdiction, as set out in 49 U.S.C. 13 (4), must clearly appear from the record.

II

The Interstate Commerce Commission can take jurisdiction of intrastate rates only if:

A. Intrastate rates are so low as to cause undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand; or

B. Intrastate rates are so low as to place an undue, unreasonable or unjust financial burden on interstate commerce.

III

The Interstate Commerce Commission found that the railroads did not introduce evidence sufficient to establish discrimination as between interstate and intrastate shippers. Therefore, the jurisdiction of the Interstate Commerce Commission, if it is to be established, must rest upon a showing that intrastate rates are so low that they fail to contribute their fair share to the over-all earnings requirements of the railroads, and therefore throw an undue burden on interstate traffic.

IV

The railroads could establish, if such were the case, that intrastate rates are so low as to cast a burden upon interstate commerce in either one of two ways:

A. They may show intrastate earnings, intrastate expenses and intrastate investment for the purpose of developing an intrastate rate of return. This the railroads did not attempt to do in this case and maintain that they cannot do.

B. They may establish an overall need for additional revenues on the part of the roads and then establish, if such be the case, that "conditions under which interstate and intrastate traffic move are * * * * * substantially the same with respect to all factors bearing upon the reasonableness of the rate." *

V

The railroads did not introduce evidence that conditions under which interstate and intrastate traffic move are substantially the same with respect to all factors bearing upon the reasonableness of the rate in the following particulars:

A. The railroads introduced no comparative rate studies, with two minor exceptions, to show that intrastate rates are not already as high on a comparable basis without the 15% increase as are interstate rates after the imposition of the 15% increase.

B. The railroads introduced no evidence of comparative cost of handling intrastate and interstate shipments

* Illinois Commerce Commission v. United States, 292 U.S. 474; 78 L ed. 1371.

of like character for like distances and in particular, introduced no evidence on comparative densities of traffic interstate and intrastate, which is of vital importance in determining costs.

VI

The Interstate Commerce Commission and the Court below ignored the substantial evidence of protestants establishing:

A. Utah intrastate rates are for the most part as high or higher without the 15% increase as are interstate rates including the 15% increase.

B. The railroads' per unit cost of handling traffic within the state of Utah is considerably lower than systemwide for the roads serving Utah, principally because of the much higher density of traffic within the state of Utah.

C. The operating ratios of the railroads within the state of Utah are substantially lower than the operating ratios of the same roads systemwide.

VII

The only evidence introduced by the railroads as to the similarity of conditions affecting interstate and intrastate rates is evidence to the effect that railroads handle interstate and intrastate shipments indiscriminately on the same cars, over the same rails and through the same terminals, which evidence is insufficient to establish substantial similarity of conditions for the following reasons:

A. It ignores any difference in rates which might have existed in interstate and intrastate rates prior

to the time the percentage increase was applied to either.

B. It ignores the difference in costs of handling interstate shipments based upon differences in density of traffic.

VIII

If the evidence as introduced by the railroads in this case is sufficient to establish jurisdiction of the Interstate Commerce Commission over intrastate rates, then the Interstate Commerce Commission automatically has jurisdiction over intrastate rates in all cases and there is no need for any hearings before the Interstate Commerce Commission under the provisions of 49 U.S.C.A. 13 (3) (4). The jurisdiction of the Interstate Commerce Commission would be complete—assuming the railroads' position here—upon the following reasoning:

A. The Interstate Commerce Commission has already decided in an ex parte interstate case that the railroads need additional overall revenue.

B. The Commission and the courts can take judicial notice of the fact of common knowledge that railroads intermingle interstate and intrastate shipments, which fact establishes that all facilities bearing upon the reasonableness of interstate and intrastate rates are substantially the same.

C. Therefore, whenever the Interstate Commerce Commission finds interstate rates must be increased, the finding automatically applies to intrastate rates, and the jurisdiction of the Interstate Commerce Commission attaches.

IX

The increase, as established in Ex Parte No. 175 for interstate rates was itself illegal and unlawful and, therefore, should not be used as a measuring stick for increasing intrastate rates. The protestants should be permitted to raise this point in these proceedings and the court below was in error in holding that such constituted a collateral attack on the Ex Parte No. 175 order.

G

ARGUMENT

The plaintiffs do not question the power of the Interstate Commerce Commission to take jurisdiction of intrastate rates under proper circumstances. It is obvious that where both interstate and intrastate shipments are handled by the same railroads, both types of traffic must contribute a fair share to the over-all revenue needs. The federal government under its power to regulate interstate commerce has an inherent power under the commerce clause of the Constitution to prevent intrastate rates from being so low as to place a burden on interstate commerce. This power was recognized by the courts before it was enacted into law by the Congress.

In the case of Houston E. & W.T. Railroad Co. v. United States, 234 U.S. 242, 58 L. ed. 1541, the Court held that where intrastate rates place a burden on interstate commerce or discriminate against persons in interstate commerce there is an inherent power in the federal government to take jurisdiction. Sub-sections (3) and (4) of Section 13 of the Interstate Commerce Act were enacted the year following the decision in the Houston case and are a mere codification of the principles there set forth. However, the courts have been uniform in their

holdings that where federal agencies attempt to interfere in intrastate matters, all elements which form the basis of federal jurisdiction must appear clearly, and any doubts must be resolved against federal regulation in favor of state regulation. Here, the Interstate Commerce Commission is being asked to raise intrastate rates in a circumstance where the Utah law would not permit them to be raised.

In the case of Davies Warehouse Co. v. Bowles, 321 U.S. 144, 88 L. ed. 635, this Court in considering a matter where an attempt was being made to extend a federal regulation to certain matters in contravention of a state statute, stated:

> "It also is contended that an interpretation must prevail as a matter of principle which will give the exemption a general and uniform operation in all states irrespective of local law. It is, of course, true that uniform operation of a federal law is a desirable end and, other things being equal, we often have interpreted statutes to achieve it. But in no case relied upon did we achieve uniformity at the cost of establishing overlapping authority over the same subject matter in the state and in the federal government."

In interpreting the power of the Interstate Commerce Commission to interfere in intrastate matters, this Court time and again has reiterated the principle that this power should be exercised with extreme caution and should be exercised only where every element of federal jurisdiction appears clearly of record. In the case of Palmer v. Massachusetts, 308 U.S. 78, 84 L. ed. 93, the Court stated:

> "To be sure, in recent years Congress has from time to time exercised authority over purely intrastate activities of an interstate carrier when, in the judgment of Congress, an interstate carrier constituted, as a matter of economic fact, a single organism and could not effectively be regulated as to some of its inter-

state phases without drawing local business within the regulated sphere. But such absorption of state authority is a delicate exercise of legislative policy in achieving a wise accommodation between the needs of central control and the lively maintenance of local institutions. Therefore, in construing legislation this court has disfavored inroads by implication on state authority and resolutely confined restrictions upon the traditional power of states to regulate their local transportation to the plain mandate of Congress. Minnesota Rate Cases (Simpson v. Shepard) 230 U.S. 352, 57 L. ed. 1511, 33 S. Ct. 729, 48 LRA (NS) 1151, Ann Cas. 1916A, 18; cf. Kelly v. Washington, 302 U.S. 1, 82 L. ed. 3, 58 S. Ct. 87."

This principle has been reiterated in other cases. See Yonkers v. United States, 320 U.S. 685; 88 L. ed. 400; Alabama Public Service Commission v. Southern Ry., 341 U.S. 341, 95 L. ed. 1002, and Arkansas R.R. Commission v. Chicago, Rock Island and Pac. R.R. Co., 274 U.S. 597, 71 L. ed. 1224.

In the case of North Carolina v. United States, 325 U.S. 507, 89 L. ed. 1760, passing upon this point the Court said:

"Intrastate transportation is primarily the concern of the states. The power of the Interstate Commerce Commission with reference to such intrastate rates is dominant only so far as necessary to alter rates which injuriously affect interstate transportation. American Express Company v. South Dakota, 244 U.S. 617, 61 L. ed. 1352. A scrupulous regard for maintaining the power of the State in this field has caused this court to require that the Interstate Commerce Commission's orders giving precedence to Federal rates must meet 'a high standard of certainty'. Illinois Central Railroad v. State Public Utilities Commission, 245 U.S. 493, 62 L. ed 425. Before the Commission can nullify a state rate, jurisdiction for the 'exercise of Federal power must clearly appear.' Florida v. U.S. 282 U.S. 194, 75 L. ed. 291."

Turning to the case now before the Court, the federal jurisdiction may be exercised in this case if, but only if, one of two conditions prevails: (1) the Utah intrastate rates are so low as to discriminate against persons in interstate commerce; or (2) the Utah intrastate rates are so low that they place an undue burden on interstate commerce because of their failure to yield a fair share of the overall earnings requirements of the railroads. The Interstate Commerce Commission determined that the first ground of jurisdiction did not exist. We are concerned, therefore, only with the second. In order for the Interstate Commerce Commission to exercise jurisdiction in this case, it must appear clearly from the record that the net earnings from the railroads within the State of Utah are deficient. In order to establish this, there has got to be evidence on both sides of the picture: first, the gross revenue yielded by the rates; and secondly, the cost of rendering the service. This principle is clearly spelled out in the case of North Carolina v. the United States, 325, U.S. 507, 89 L. ed. 1760. It cannot be proved by evidence on one side of the picture only. Lower intrastate rates might be justified by lower intrastate costs. Likewise, a mere showing of higher intrastate costs would not prove anything unless the revenues were also shown.

In order for the Interstate Commerce Commission's order to be valid, it must contain a general finding to the effect that the Utah intrastate rates cast an undue burden on interstate commerce, and it must contain subsidiary findings in support of the general findings. Further, all of the findings must be supported by substantial evidence. We do not quarrel with the sufficiency of the general findings as written in the report. The Interstate Commerce Commission has complied with the requirements of the case of King v. United States, 344 U.S. 254, 97 L. ed. 301 in this regard. In fact the approved findings

in the King case have been copied almost verbatim. We do maintain, however, that there is not substantial evidence, in fact we say that there is no evidence upon which the findings could be based, and there we say the report and order is fatally defective.

The railroads could prove, if such were the case, that intrastate rates were so low as to cast a burden upon interstate commerce in either one of two ways. The most direct way would be to introduce evidence as to intrastate revenues within the state of Utah, the costs incident to earning such revenues and an allocation of their property investment to intrastate service. The railroads did not do this and take the position that they cannot do it. Under the holding in the King v. United States, 344 U.S. 254; 97 L. ed. 301, the railroads may make their proof if they can show first, that they are in need of revenues overall on their system, and secondly, that the conditions under which interstate and intrastate traffic move are substantially the same as to all factors bearing on the reasonableness of the rates.

The rule in the King case is in effect syllogistic reasoning.

A. Overall railroad rates should be increased.

B. All factors affecting the reasonableness of intrastate rates are the same as those affecting all other rates.

C. Therefore, intrastate rates should be increased.

However, as in all syllogisms, if either premise is not true, the conclusion does not follow. We agree that the railroads did introduce evidence from which the Commission might have found a need for overall revenue. We maintain that they introduced no evidence from which could be found the same

ness of conditions required under the second point. The railroads have not proved the minor premise. That they have the burden of proof in this matter is beyond dispute; and since they have to make their proof, the jurisdiction of the Interstate Commerce Commission should not exist.

It is obvious from the evidence introduced by the railroads in this case, and by the arguments of counsel in the courts below, that the defendants feel that the necessity of increased rates, both intrastate and interstate, was established in Ex Parte 175 and that the increase of intrastate rates should be a mere formality. This fact was commented upon by the Court in Mississippi Public Service Commission v. United States of America and Interstate Commerce Commission, 124 Fed. Supp. 809, Motion to Affirm granted 349 U.S. 908; 99 L. ed. 1244 in the following language:

> "The record shows that in making the investigation for the nation as a whole in Ex Parte No. 175 that the Commission at that time was making a determination that the intrastate rates should be increased as well as the interstate rates. This will not do. There must be a finding based upon substantial evidence after a full investigation that the intrastate rates are abnormally low and that traffic thereunder fails to produce its fair share of the earnings to yield revenue sufficient to accomplish the purpose of interstate commerce. The record does not bear out any substantial evidence to this effect. There was no separation made by the railroads of their revenues, expenses and properties as between interstate and intrastate operations. So far as the record shows, it could be fairly assumed that the rates fixed by the Mississippi Commission were not abnormally low, but were bearing a fair percentage of revenue for the operation of the carriers."

The same matter was commented upon by Judge Christen-

son in his dissenting opinion in the court below in this case as follows:

> "In reading the transcript before the Interstate Commerce Commission one may detect impatience on the part of some of the witnesses espousing the increase at any suggestion that they were called upon to produce a quantum of proof going to anything beyond an intimate connection between interstate and intrastate traffic in Utah and the difference in rates without the application of the 15% increase to intrastate traffic. In the argument before this court the thesis was pursued that on the basis of common knowledge as to conditions in every state in the Union it could be said that all factors influencing rates were the same, and it was intimated that without evidence these matters of common knowledge would themselves justify the application of similar increases to the two classes of traffic: I fear that this is where the order of the Interstate Commerce Commission is leading us; that, henceforth, if such orders be approved now that the problem has been squarely raised (as it does not appear to have been before) there will be no use for hearings before either the state commissions or the Interstate Commerce Commission with regard to intrastate rates, except as a mere formality in approval of nation-wide increases."

THE EVIDENCE

Similarity of Conditions Affecting Interstate and Intrastate Traffic

The railroads should have had the burden of proof in the proceedings before the Interstate Commerce Commission. They failed to bear this burden. The protestants, although they should not have had to bear the burden of proof, picked up this burden only to have their evidence ignored or minimized by the commission in its report.

The sole evidence of the railroads going to establish the similarity of conditions under which interstate and intrastate traffic move as required by the King case was the testimony of several of the witnesses, i.e., Jensen and Bradford, to the effect that the railroads intermingle interstate traffic without distinction, carrying it on the same tracks, over the same rails and through the same terminals. This is a matter that scarcely needed evidence. It is a matter of common knowledge and known to anyone who has even a superficial acquaintance with the railroads' operations. It is a matter of which the Interstate Commerce Commission has often taken notice and of which the courts can well take judicial notice. However, it certainly cannot be held that such evidence establishes that all factors which bear on the reasonableness of the rates are substantially the same.

In commenting upon this Judge Christenson in his dissenting opinion in the court below stated:

> "The prevailing opinion places stress upon the evidence that there is no discrimination in the handling of intrastate and interstate freight shipments, since they are both handled on the same trains, by the same crews, and by the same departments and it is stated that 'under such conditions, the contention of the plaintiffs has been rejected by the courts.' I cannot find that any court has gone to the extent of holding that such common treatment furnishes a basis of applying intrastate rate increases in the absence of evidence showing similar conditions with reference to all factors affecting rates.
>
> "It is true that Mr. Kroll testified on behalf of the railroads that no distinction is made between the two types of traffic; that traffic is intermingled as between interstate and intrastate; that the same crews, the same clerks, and the same trains haul interstate and intrastate traffic; and that intrastate shipments

and interstate shipments move under 'identically the same conditions'. If an intrastate case can be made on such general testimony, largely within common knowledge, a hearing should not be necessary. Yet as far as the similarity of conditions affecting costs (as distinguished from actual rates charged without reference to cost) is concerned, this seems typical of testimony on which reliance must be placed if the order is upheld."

Comparison of Existing Rates

The railroads presented no comprehensive rate study to show that Utah intrastate rates without the 15% increase are lower than interstate rates including the increase. The witness Watson itnroduced Exhibits 6 to 36 (R. 190, 451-500) which on cursory examination appear to be comparative rate studies. These exhibits show intrastate movements on certain commodities as well as interstate movements and show the revenue per carload unit realized on each of these movements. For the most part the mileage on the interstate examples which he uses are so long and the mileage on the interstate shipments are so short that they afford little basis of comparison. In those few instances where the mileages are comparable, it was developed by counsel on cross-examination of Watson (R. 206) that in almost every instance the intrastate rates were already higher without the increase than were the interstate rates with the increase. Watson then took the position that his exhibits were not intended as comparative rate studies, but were merely introduced for the purpose of showing that there was traffic moving under Utah intrastate rates which would yield additional revenue if the rates were increased. This cross-examination is found at pages 206 and 207 of the record as follows:

Q. I will restate it. I will get at it another way. Your exhibit doesn't purport to show, and doesn't show, that any particular intrastate movement of traffic in the State of Utah is currently paying a lower rate than a comparable interstate shipment moving a comparable distance?

A. That is a very broad statement and I can't testify or answer you unless you want to make it a specific point to point rate. There are hundreds of rates in these exhibits, and I can't attempt to justify an intrastate rate or an interstate rate. All I am trying to bring out here is that Utah traffic is not paying the 15 percent increase and therefore it shows preference to the Utah shippers in preference to the interstate shippers.

Q. We all knew before we came to this hearing didn't we that Utah wasn't paying the 15 percent on intrastate shipments, there isn't a person in this room that was in doubt on that, was there?

A. Well I don't think there was.

Q. Well then, why - - -

A. I think we have been before the Utah Commission with petitions on several occasions that shouldn't be any doubt, there wasn't any doubt in my mind about it.

Q. The only thing you claim for these four pages of paper that you have put in here is to establish what we already knew that Utah wasn't paying the 15% on intrastate shipments, isn't that correct?

A. That is right. These exhibits - - - -

Mr. Rampton: All right.

Mr. Fitzpatrick: Just a minute now. All right, that is all. I will have some questions on redirect.

A. I thought that question was directed to me, I would like to answer it.

Mr. Fitzpatrick: Go ahead. Complete your answer.

A. He stated our position, that is all there is to it, that is the reason we are here."

The railroad witness Early gave some examples of comparative interstate and intrastate coal rates on which the interstate rates are higher, which figures were picked up and included by the Commission in its report (R. 101). The Commission, however, ignored the exhibits of the witness Manley (Ex. 68, 69, 70, 71, 72 and 73. R. 352, 729-734), which showed examples quite to the contraty.

The Commission found on the basis of exhibit 37 (R. 113, R. 501) that certain interstate class rates are higher than intrastate rates at comparable mileages. However, the Commission had to find also that these interstate class rates are mere paper rates moving little traffic as this type of traffic moves interstate on special merchandise rates which are materially lower than the intrastate class rates on which such shipments must move intrastate (R. 113, 114).

The witness Colwell introduced evidence showing that Utah intrastate steel rates are already materially higher than comparable rates on other portions of the system of the Southern Pacific Railroad (Ex. 74, R. 375, 735). He introduced exhibits to show that rates on LCL shipments from Salt Lake City to places within the state of Utah were already higher than shipments for comparable distances from Salt Lake City to points outside the state of Utah (Ex. 75, R. 375, 736-738). He further testified that these rates were typical (R. 372).

The railroads did not bear their burden of proof that Utah intrastate rates are lower than interstate rates, except in the cases of a few isolated rates on coal and some paper class rates. In fact, the railroads' own evidence, which was put in

through the witness Watson, establishes quite the contrary, and the evidence of the protestants established clearly that by and large intrastate rates, before the 15% increase was applied, already were higher than comparable interstate rates which had the increase.

It may be well here to comment upon a device adopted by the Interstate Commerce Commission in its order in an attempt to meet this objection of the protestants. This order provides (R. 119) that no increase shall be taken on an intrastate rate which will raise it to "levels higher than the interstate rates on like traffic to or from Utah for like or greater short-line distances over the same railroads." This reads well, but it is an illusory protection. Most of the traffic in the west moves on what are known as commodity rates which are not based upon mileage, but which are merely flat rates for a given commodity, in a given weight, from a given point of origin to a given destination. It is on but a rare occasion therefore, that it is possible to find an intrastate rate and an interstate rate which are comparable and to which the above test could be applied. This can be seen from an examination of the exhibits of the witness Watson referred to above. In only some six instances among the many hundreds of rates which he sets forth in these exhibits is it possible to find intrastate rates and interstate rates on like commodities for comparable distances. The "protective" clause in the Interstate Commerce Commission Order, therefore, means nothing so far as a hold down on intrastate rates is concerned.

Comparative Costs

Even if the railroads had proved, which as we pointed out above they did not—in fact the evidence is quite to the con-

trary—that intrastate rates were lower than comparable interstate rates, such would not be sufficient, standing alone, as an evidentiary base for their ultimate findings. This court stated, in the case of Florida v. United States, 282 U.S. 194, page 211, 75 L. ed. 291 at page 302:

> "The Commission has no general authority to regulate intrastate rates and the mere existence of a disparity between particular rates on interstate and intrastate traffic does not warrant the Commission in prescribing intrastate rates."

This holding was cited with approval in the case of North Carolina v. United States, 325 U.S. 507, 89 L. ed. 1760 at page 1768. The evidence must also establish that the elements affecting costs of service are as favorable or more favorable in regard to intrastate commerce as in regard to interstate commerce. We must look at both sides of the ledger.

The railroad evidence is even more wanting, if possible, in regard to comparative costs than it is in regard to comparative rates. The prevailing opinion in the court below makes the statement "the cost of handling intrastate shipments was found to be as great if not greater than the handling if interstate freight." If by this statement the majority opinion was implying that the Interstate Commerce Commission had an evidentiary basis for so finding, it can only be concluded that the record was not carefully examined by the judges who concurred in this opinion. Counsel for the appellants represents to this court that no such evidence exists. Judge Christenson who dissented and whose dissent indicates a careful perusal of the record, states in regard to this contention:

> "The evidentiary basis in the record of the statement that a positive showing was made that the average unit expense of servicing Utah intrastate traffic

is at least as great as that of servicing interstate traffic to and from Utah, cannot be found in the transcript, nor can I find it referred to in the briefs of the respondents. The record seems devoid of a comparison of conditions bearing on the reasonableness of rates, except for such common factors as were held in the first North Carolina case to be insufficient in the findings to support an order. It does not seem enough for the Commission to point to evidence of admitted differences in relevant factors and to say that the differences are not as great as those opposing the increases claim, without some basis in the record upon which to premise a finding that the differences are not substantial."

The protestants, on the other hand, introduced positive evidence to the effect that factors affecting costs of the railroads were much more favorable to lower costs on Utah intrastate traffic than on traffic of the roads on their system as a whole. One of the most important factors affecting the per unit cost of handling freight is the matter of density of traffic. The greater the density, other things being equal, the lower the per ton mile cost. This results from the fact that railroad costs of operation can be broken down into the categories of fixed costs and variable costs. Variable costs vary directly with the amount of freight handled and the distances handled, and, therefore, variable costs will bear equally upon all ton miles of freight handled regardless of density. On the other hand total fixed costs do not change materially with the volume of freight handled and, therefore, as the volume goes up these fixed costs bear less heavily on each unit handled.

Exhibit 64 introduced by the witness Crandall (R. 311, 548) is a comparative density study for Denver & Rio Grande, Southern Pacific, Union Pacific and Western Pacific railroads. Density of traffic in terms of ton miles per main-line mile

of track is compared system-wide for these roads with the state of Utah alone and shows that in the case of all four of these roads for the years 1950 through 1953, the density of traffic was materially higher within the state of Utah than on a system-wide basis. These studies were prepared from annual reports of the railroads on file with the Public Service Commission of Utah. The Interstate Commerce Commission attempts to minimize the effect of this density study on the grounds that it is based upon miles of main-line track and not upon miles of main-line plus branch lines. This is not a valid criticism of the exhibit and does not affect its value as a comparative study. Main-line mileage was used for both Utah density and system-wide density. Had total mileage been used, it would have reduced the density figures in both instances, but would have reduced them in approximately the same proportions, and so would not change the comparative relationship. In commenting upon the Interstate Commerce Commission's belittling of these figures, Judge Christenson, in his dissenting opinion stated:

> "The fact that in arriving at density figures combination main-line and branch-line track was not considered, does not seem to render the data insignificant, since the comparison was based upon main-line track nationally as well as locally. No facts appear which make the conclusion rational that the density figures would, on any theory, represent a factor having no substantial bearing on the reasonableness of the respective rates. It does not seem enough to say that the substantial effect was not as great as if both main-line and branch-line figures had been presented, or to ignore the effect because of vague "average unit expense" figures, neither qualitatively nor quantitively compared therewith."

Comparative Operating Data

As has been stated above, the railroads introduced no evidence at all breaking down operating figures between interstate and intrastate commerce. Counsel for the railroads maintained that it could not be done. While counsel for the appellants do not agree with this position, we do agree, as above stated, that the fact that the railroads did not do this does not mean that they could not make a case if they were able to make it on another basis.

However, the protestants did introduce comparative operating statistics. The railroads are required to submit to the state commissions reports of their operating figures broken down as to states. From the report made to the Utah Public Service Commission by the railroads, the witness Crandall prepared the operating ratio figures as shown on Exhibit No. 64 (R. 311, 548). Operating ratio is merely the percentage relationship of costs to revenue and therefore, the lower the operating ratio, the better the profit position of the railroad. Exhibit 64 shows that the operating ratios of Denver & Rio Grande, Southern Pacific, Union Pacific and Western Pacific within the state of Utah were materially lower than their system-wide operating ratios for the years 1950, 1951, 1952 and 1953. The Interstate Commerce Commission in its report, while taking cognizance of these figures, attempts to minimize their effect by stating that the railroads object to the formula by which the break-down is made. While this may be true, they are the railroads' own figures and represent the best evidence available as to the break-down of revenues and costs between the various states.

Exhibit 76 introduced by the witness Thain (R. 378, 739) is a rate of return study of Bamberger Railroad Co. which oper-

ates entirely within the state of Utah. Rate of return is the percentage relationship of net profit on an annual basis to the investment of the railroads in transportation property. Therefore, the higher the operating ratio the better the profit position of the railroad. In the year 1953, Bamberger Railroad Co. had a rate of return of 15.98% which is more than double the rate of return of any of the defendant railroads which operate in interstate commerce. The railroads attempted to meet this evidence by showing that Bamberger handled not only intrastate traffic, but also interstate traffic on an interline basis. Protestants then subpoenaed the witness Balser, president of Bamberger Railroad Co., who testified that Bamberger's division of revenue on interstate shipments was based upon its intrastate rates as a maximum. Therefore, Bamberger's revenue was exactly what it would have been had every ton of freight it handled been intrastate. The Interstate Commerce Commission in its report, while taking cognizance of this exhibit attempted to minimize its importance by saying that Bamberger was a small road having no passenger deficit to contend with. Certainly, it cannot be contended that the passenger deficit on the interstate roads is sufficient to cut their rates of return in two.

Another interesting comparison is found from the railroads' own exhibits. Southern Pacific Railroad which has only a minute percentage of its operations in the state of Utah showed a rate of return for 1953 of 3.48% (R. 364). Union Pacific which has a somewhat greater percentage of its operations in Utah intrastate service showed a rate of return of 3.56% (R. 363), while Denver & Rio Grande, approximately 50% of whose operations are within the state of Utah showed a rate of return of 6.06% (R. 364). As the percentage of the rail-

roads' business within the state of Utah increases, the rate of return of the roads tends to be higher.

The railroads' evidence is totally lacking in anything which would indicate that cost factors affecting intrastate traffic in Utah are not more favorable than those for the railroads systemwide. The evidence of the protestants on the other hand clearly establishes that cost factors within the state of Utah are considerably more favorable from the railroads' standpoint than are their cost factors systemwide.

Comparative Economic Conditions

The witness Kroll, through his testimony and by Exhibit 1 (R. 163, 419-425) shows that in recent years economic conditions in the west and in Utah particularly have improved to a greater degree than in the nation as a whole. With this position the appellants do not quarrel. However, we maintain it has no materiality in a Section 13 case. It was no doubt introduced for the purpose of establishing that the Utah economy would be able to stand the increased rates. However, the fact that Utah might be able to pay the increased rates on intrastate traffic has no influence upon whether or not the Interstate Commerce Commission could take jurisdiction of these rates in a Section 13 case.

In a purely interstate case where the Interstate Commerce Commission has primary jurisdiction, it is quite common for the Commission to shift the burden of rates according to ability to pay, requiring certain high yield commodities to pay more than their fair portion of the required revenue to compensate for the fact that certain low grade commodities cannot bear their full portion of the operating cost of the road. In a Section 13 case, however, such power does not exist. The

Interstate Commerce Commission can take jurisdiction only if the Utah rates are not bearing their fair share of the burden and so placing a burden upon interstate commerce. The Interstate Commerce Commission cannot say, "The Utah intrastate rates are bearing their fair share of the railroads' revenue burden, but because of a favorable economy, Utah shippers can pay more than their fair share, therefore, we will take jurisdiction, and require them to pay more."

These economic studies of the witness Kroll, together with the history of rates within the state of Utah as shown in Exhibits 3, 4 and 5 (R. 190, 434-450) by witness Watson, explain why Utah rates are currently yielding more than their fair share of the railroads' revenue requirements even without the 15% increase. The basic Utah intrastate rates were established many years ago when Utah's economy was largely agricultural and when traffic density was low. High rates therefore had to be imposed to compensate for the low density. Succeeding horizontal percentage increases down through Ex Parte No. 168 tended further to distort the difference rather than to bring Utah rates down into line with interstate rates. At the same time, Utah was changing from an agricultural to an industrial economy and the density of the traffic was increasing until, as shown by Exhibit 64 (R. 311, 548) it was not lower, but considerably higher than systemwide density. Nevertheless, the old high rates, made still higher by past horizontal percentage increases, still remained in effect, and the railroads by the Ex Parte No. 175 increases are attempting to still further distort them. This matter was commented upon by Judge Christenson in his dissenting opinion as follows:

> "That economic conditions in Utah as of 1950 have improved greatly over the preceding period seems to have no determinative effect on a Section 13 case, since

it is not the ability of intrastate traffic to pay more than its fair share that is involved, but whether the intrastate rate is so low as to be an economic burden on interstate commerce. Furthermore, there seems much force to the plaintiffs' argument that Utah's present economic status, if anything militates against the Commission's conclusion since it suggests that in past years, while Utah's traffic has been essentially agricultural and relatively unproductive of revenue, its rates have moved up as a result of increases corresponding to nation-wide increases, and that now its economy has changed to predominantly mining and industry, the relative productivity of the traffic to the railroads would make the recent nation-wide increases fairly inapplicable intrastate. Be this as it may, and conceding that evidence of general economic conditions locally may be helpful on other phases of a rate case, they do not tend to show that all factors affecting rates are substantially the same as between interstate and intrastate commerce for the purpose of the doctrine announced in *Illinois*."

The Ex Parte 175 Increases as a Measuring Stick

It is the position of the plaintiffs in this case that the interstate rates which the Commission is attempting to use as a standard for increasing intrastate rates are themselves unlawful. It is their position that the order in Ex Parte No. 175 was in direct violation of certain provisions of the Interstate Commerce Act.

The court below refused to consider this point stating that the plaintiffs below, appellants here, were making a collateral attack on Ex Parte No. 175. We agree with the general principle that the decisions of the Interstate Commerce Commission are not open to collateral attack, however, we believe that this is not a collateral attack. We are not here attempting to set aside the interstate increases as authorized in

Ex Parte 175. That case was without doubt res adjudicata as to the interstate rates. However, when the Interstate Commerce Commission attempts to use its findings in Ex Parte No. 175 as a measuring stick in this case they can be no more than stare decisis and we are entitled to attack the logic and the legality of that order as it applies to these proceedings.

We represent to the Court that the decision in Ex Parte No. 175 violates the Interstate Commerce Act in the following particulars:

(a) Title 49 U.S.C.A. 15a (2) provides as follows:

> "(2) Rates to permit carriers to earn fair return. In the exercise of its powers to prescribe just and reasonable rates the commission shall initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the commission may from time to time designate) will, *under honest, efficient and economical management* and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation: Provided, That the commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different portions of the country." (Italics added)

Neither in Ex Parte 175 nor in any of the other ex parte horizontal percentage increase cases have the railroads presented or has the Interstate Commerce Commission required any evidence as to the efficiency and economy of the management of the roads. Such situation has merely been presumed to exist.

(b) Title 49, U.S.C. Section 3, paragraph (1) provides:

"Undue preferences or prejudices prohibited. It shall be unlawful for any common carrier subject to the provisions of this chapter to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

In Ex Parte 175 and in the three other ex parte horizontal percentage increase cases since the second World War, the Interstate Commerce Commission has allowed the railroads to increase all interstate rates by flat percentages with only very restrictive exceptions. The result of these orders has been to give undue advantage and preference to the shorthaul shippers and to cause unreasonable prejudice against and disadvantage to longhaul shippers. The reason for this is obvious. The longhaul rates already being higher, the percentage increase applied to these rates results in a greater increase in dollars and cents than in the case of the shorthaul shippers. Shippers who are located farther from the principal markets than their competitors, but who, through economies of management, have been able to produce their product at a price where they can compete with their more favored competitors through absorption of the freight differences, are suddenly faced with material increases in the dollars and cents difference between their freight bill and that of their competitors. In the ex parte increase cases, the Interstate Commerce Commission gave no thought to whether or not the horizontal increases were pricing established industries out of their markets. They gave no consideration to whether or not this order resulted in violation of the above quoted section 3, paragraph 1 of the Interstate Commerce Act.

(c) Title 49, U.S.C.A., Sec. 1, paragraph (5) provides in part as follows:

> "Just and reasonable charges required; classification of messages, and rates; exchange of services. All charges made for any service rendered or to be rendered in the transportation of passengers or property or in the transmission of intelligence by wire or wireless as aforesaid, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful * * * * *"

The ex parte increase cases take no cognizance of whether or not the flat percentage increase results in unjust and unreasonable charges. They merely accentuate and exaggerate any injustice which existed in the rates prior to the increases.

We recognize, of course, that in revenue cases uch as the ex parte cases, the Commission cannot go into a detailed examination of each individual rate on all of the railroads in the country. That would indeed be a mountainous task. The Commission can and should, however, investigate and make appropriate orders in regard to groups or blocks of rates in regard to which flat percentage increases would violate the provisions of the Interstate Commerce Commission Act above set forth.

In its recent order in Ex Parte No. 206, not yet published as a printed report, the Interstate Commerce Commission itself recognized the inequities inherent in percentage horizontal increases. On sheet 77 of that report the Commission stated:

> "We have heretofore suggested that the time has probably come when consideration should be given to ways of increasing rates other than by means of horizontal increases. The carriers should give consideration to this suggestion."

There can be no question but that the Interstate Commerce Commission in Ex Parte No. 175 was attempting to impose a hard and fast standard for increases on the nation's railroad rates countrywide, interstate as well as intrastate. In its report in this case, the Commission stated (R. 117):

> "The Ex Parte No. 175 increases were authorized for interstate rail traffic through the country based upon the general needs of the railroads generally and have been made effective on interstate traffic generally as well as upon intrastate traffic within most of the states."

In other words the Commission is stating in effect that they granted the Ex Parte 175 increases on interstate rates on the assumption that the same increase was required on intrastate rates in all states. The Interstate Commerce Commission pre-judged the intrastate levels in every state in its Order in Ex Parte 175. The evidence in that case indicated clearly that the revenue needs of the roads in the various sections of the country were not the same. This difference was recognized by the Commission in its second Ex Parte 175 order in which a greater increase was granted to the eastern roads than the western roads. However in the final order, this difference was washed out. We are not alone in our opposition to this procedure of lumping all the roads in the country in one basket and deciding the rates of all on the basis of the revenue needs of the poorest of the railroads. Commissioner Aitcheson in dissenting from the Ex Parte 175 order in a dissent which was concurred in by Commissioners Mahaffie and Splawn stated:

> "I concur generally in the foregoing report but cannot agree that the revenue needs of the petitioning railroads in the three rate territories are so equal as to warrant a uniform nationwide increase in rates. The revenue needs of the railroads in the eastern district

are greater than in the southern or western districts as the report makes entirely clear. This difference in financal conditions should be recognized by the commission." (284 I.C.C. 589).

Now the Interstate Commerce Commission proposes to go one step further. In addition to applying a uniform increase in interstate rates, where it does have jurisdiction, on the basis of the requirements of the poorest roads, it proposes to impose the same straight-jacket on intrastate rates where it may take jurisdiction only under very restricted circumstances. It proposes in effect to measure increases on Utah intrastate rates by the revenue needs of the New York Central, the Pennsylvania and the New Haven railroads. This we submit it cannot do. Under the provisions of 49 U.S.C. 13 (4) Utah intrastate rates must be measured by the Utah intrastate operation of the railroads.

State Authority v. Federal Authority

This court in many decisions, some of which are cited above, has upheld the power of the states to regulate intrastate rates. As the Court held in the case of North Carolina v. United States, 325 U.S. 507; 89 L. ed. 1760, before the Commission can nullify a state rate, jurisdiction for the exercise of federal power must clearly appear. If the order in this case is to be upheld, then the standards set forth in the North Carolina case must be disregarded. If this order is to be upheld, it must be on the basis of unwarranted presumptions which would effectively relieve the states of their power to regulate intrastate rates in any case. This position is clearly set forth in the dissenting opinion of Judge Christenson, in the following language:

"Three unwarranted assumptions would seem necessary to logically sustain the decision of the Commis-

sion. One would be that prior to the application of the 15% increase nationwide, intrastate and interstate rates in Utah were in balance with reference to the cost-revenue factor so that each furnished its fair share of the total revenue needs. If this presumption could be applied in the absence of evidence in the record to support it, or in view of the kind of evidence before us, the making of a rate case would be exceedingly simple, i.e. (a) the rates, intrastate and interstate in Utah prior to the application of the nationwide increase affecting interstate commerce provided in Ex Parte 175 were reasonably in balance; (b) interstate rates have been increased 15%, and thus, intrastate rates are out of line by this percentage; (c) by increasing intrastate rates 15% the two classes are restored to balance so that each furnishes its fair share of general revenue requirements.

"Another presumption would have to be indulged: that between the time of the last simultaneous increase, or at least subsequent to the increase under Ex Parte 175, no new factors affecting costs have developed to throw the presumed balance out. The basis of this is furnished, if at all, by the testimony concerning the intermingling of interstate and intrastate traffic, which, as has been pointed out, is insufficient.

"And there is another assumption that is required if the deficiencies are to be avoided. On the whole record it appears without dispute that there are different factors operating in progressive measure to influence intrastate rates as distinguished from rates interstate from the standpoint of the revenue-cost ratio. The rapid development of the industrial and mining economy of Utah in relation to the nation as a whole, and its established incidents, including increasing traffic density, underscore the dissimilar conditions. No evidence to disprove this divergence nor to define, limit or measure its effect appears. The Commission in its report, however, as above pointed out, dismisses the significance of these factors and other studies directly measuring the differences, not on the basis of any op-

posing studies or evaluations introduced at the hearing but, for example, in one instance by a general conclusion as to comparative unit costs finding no support in the evidence, and in another instance by referring to its determination in an entirely different case.

"May it be assumed, without evidence in the record which would furnish a rational basis in and of itself, that as an agency presumably equipped or informed by experience to deal with a specialized field of knowledge, its conclusions are valid and unassailable here? If this be so, the pattern for virtually automatic application of nation-wide rate increases to intrastate commerce would be complete."

If these presumptions are justified in this case they are justified in every case. Therefore, in all cases of interstate increases, as quickly as the Interstate Commerce Commission determines that an overall need exists for increased revenue for the railroads, an inflexible pattern based upon presumption and matters of common knowledge would force the intrastate rates to adopt the same percentage rate of increase as interstate rates. Hearings before State Commissions or Section 13 hearings before the Interstate Commerce Commission would become mere sham proceedings, leading inexorably to a preordanied conclusion. If such is the law it should be clearly established in this case so that state regulatory bodies may be aware that they have no power to pass upon intrastate rates. Counsel wishes to urge upon this court that if the decision of the Interstate Commerce Commission is to be sustained, it be sustained upon this basis of presumption and matters of common knowledge, and not upon the fiction that substantial evidence exists where obviously none does.

H

CONCLUSION

Counsel urges upon this court that the dissenting opinion of Judge Christenson correctly analyzes the evidence in this case and properly applies the law to that evidence. The railroads failed to meet the formula set down in the King case in that they did not prove by any evidence that conditions under which interstate and intrastate traffic move are substantially the same with respect to all factors bearing on the reasonableness of the rate. The basis for Interstate Commerce Commission jurisdiction under 49 U.S.C.A. 13 (3) (4) therefore did not exist. The holding of the trial court should be reversed and the order of the Interstate Commerce Commission in this matter should be vacated and the application of the increased intrastate rates enjoined.

Respectfully submitted,

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PROOF OF SERVICE

I, CALVIN L. RAMPTON, counsel of record for appellants, and a member of the bar of the Supreme Court of the United States, hereby certify that on the ..... day of October, 1957, I served, on behalf of the appellants herein, copies of the foregoing Appellants' Brief, as follows:

1. On the United States, by leaving a copy thereof at the office of A. Pratt Kesler, United States Attorney for the District of Utah, at Room 200 Federal Building, Salt Lake City, Utah, and by mailing a copy in a duly addressed envelope, with air mail postage prepaid to the Solicitor General, Department of Justice, Washington, D.C., and to Stanley N. Barnes, Assistant Attorney General, Department of Justice, Washington, D.C.

2. On the Interstate Commerce Commission, by mailing a copy in an addressed envelope, with air mail postage prepaid, to Robert W. Ginnane, Esq., General Counsel, and Charles H. Johnson, Assistant Counsel, at the offices of the Commission, Washington 25, D.C.

3. On the intervening defendants by mailing copies in addressed envelopes, with first class postage prepaid, to their respective counsel of record as follows:

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DEC 6 1957
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APPELLANTS' REPLY BRIEF

In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 15

PUBLIC SERVICE COMMISSION OF UTAH and UTAH CITIZENS RATE ASSOCIATION,
Appellants,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,
THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY,
UNION PACIFIC RAILROAD COMPANY,
SOUTHERN PACIFIC COMPANY,
THE WESTERN PACIFIC COMPANY,
UTAH RAILWAY COMPANY,
BAMBERGER RAILWAY COMPANY,
TOOELE VALLEY RAILWAY COMPANY,
SALT LAKE, GARFIELD AND WESTERN RAILWAY COMPANY,
THE OGDEN UNION RAILWAY AND DEPOT COMPANY,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

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APPELLANTS' REPLY BRIEF

In the Supreme Court of the United States

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TOOELE VALLEY RAILWAY COMPANY,
SALT LAKE, GARFIELD AND WESTERN RAILWAY COMPANY,
THE OGDEN UNION RAILWAY AND DEPOT COMPANY,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

A

OPINIONS IN DISTRICT COURT

The prevailing opinion of Circuit Judge Pickett and Judge Ritter and the dissenting opinion of Judge Christenson are

reported at 146 Fed. Supp. 803 and are reproduced at pages 39 to 65 of the printed record.

B

BASIS OF JURISDICTION

The basis of jurisdiction of this appeal is set forth in the appellants' brief heretofore filed in this case.

C

STATUTES INVOLVED

The statutes involved in this matter are set forth in the appellants' brief hereto filed in this case.

D

QUESTIONS FOR REVIEW

The questions presented for review in this appeal are as follows:

(1) Were the findings of the Interstate Commerce Commission challenged in the above entitled case supported by substantial evidence?

(2) May the court sustain the Interstate Commerce Commission's Order, without further evidence on the following?

(a) The presumption that interstate and intrastate rates were in proper relationship prior to the increase.

(b) The matter of common knowledge that intrastate and interstate traffic are intermingled on the same trains.

(3) May the Interstate Commerce Commission and the Court ignore the evidence of the protestants which detracts from the evidence of the railroads.

(4) May an attack be made in this action upon the legality of the Interstate Commerce Commission Order in Ex Parte No. 175.

E

ARGUMENT

This brief is filed in reply to certain matters set forth in the briefs of the United States and Interstate Commerce Commission and the intervening railroads and in particular as to the evidence in regard to the following points:

(a) The relative levels of interstate rates and Utah intrastate rates prior to the entry of the Interstate Commerce Commission order increasing the Utah intrastate rates 15%.

(b) The evidence that "the conditions under which interstate and intrastate traffic move are substantially the same with respect to all factors bearing on the reasonableness of the rate*."

EVIDENCE AS TO RELATIVE RATE LEVELS

Throughout their brief the intervening railroads confuse equality of increase with equality of rates. It is not disputed here that prior to the order in the 13th Section hearing the interstate rates reflected the Ex Parte No. 175 increase while the intrastate rates did not. However, from that fact alone nothing can be determined about which rates were higher for a comparable service. If intrastate and interstate rates were different, to apply an identical percentage increase to each would not bring them into line but rather would increase the difference between them.

---

*King vs. United States, 344 U. S. 254, 97 L.Ed. 301.

Counsel for the intervening roads then go on from this false premise to a conclusion equally false. They argue that because the 15% increase was not made applicable to Utah intrastate rates by the Utah Commission, the railroads were being deprived of some $1,860,000.00 a year in gross revenue to which they were entitled. The appellants agree that if the Utah intrastate rates had been increased by 15%, and if such increase resulted in no loss of traffic, the railroads would have received additional revenue in the amount claimed. However, we do not agree that the railroads were entitled to such revenue and we maintain that the failure of the railroads to obtain such revenue in no way casts a burden on interstate commerce such as to permit the Interstate Commerce Commission to take jurisdiction of the intrastate rates.

The Government in its brief makes more of an attempt to analyze the evidence in this regard, however, it is able to point to little evidence in the record of interstate rates that are higher on a comparable basis than intrastate rates excepting a few instances which we have already noted in our original brief. There is evidence in the record in regard to coal rates showing that in some instances interstate rates are higher, including the 15% increase, than are intrastate rates without it. On the other hand, there is evidence of rates quite to the contrary. This evidence was commented upon by Judge Christenson in his dissenting opinion as follows:

> "Other evidentary matters mention in the prevailing opinion as a foundation for the Commission's conclusions are believed insufficient to permit plausible inferences to that effect in view of the record as a whole. Such disparity of rates as were shown are in both directions, and it is well established that mere disparity of rates establishes no sufficient basis for such an order." (R. 59).

The only other instances where the railroads presented evidence before the Interstate Commerce Commission to show interstate rates higher than intrastate rates was in the case of class rates between Salt Lake City and certain points in Utah on the one hand and between Salt Lake City and points in Idaho on the other. The effect of this class rate study, however, was completely destroyed by the evidence of the protestants which showed that the interstate class rates into southern Idaho were mere paper rates as there are in effect special merchandise rates on which the traffic actually moved which are substantially lower than the interstate class rates and are also substantially lower than the intrastate class rates on which such shipments must move intrastate, there being no intrastate special merchandise rates (Ex. 75, R. 736-738). In this regard the Interstate Commerce Commission in its order makes an unusual finding, it states that it gives no weight to the protestants' exhibit comparing intrastate class rates and interstate merchandise rates because it is not comparing like things. We are unable to see what difference it makes what name is applied to a particular rate. The fact remains that under the evidence, less than carload shipments of merchandise could move a similar distance interstate out of Salt Lake City at a lower rate than it could move intrastate even before the intrastate rates were increased by order of the Commission.

Two studies were made and introduced into evidence, one by the railroads and one by the protestants before the Commission, showing the per ton mile yield from intrastate shipments as compared with the per ton mile yield from interstate shipments. The figures introduced by the railroads are on a composite basis and make no effort to classify commodities. They show that in the year 1952, the average yield per ton mile on all commodities was as follows:

United States	1.43 cents
Western District	1.393 cents
Utah	1.258 cents

(R. 99).

The effect of ths study, however, is destroyed by the admission of the witness Kroll, who introduced it, that the consist of the Utah traffic is more heavily weighted in favor of low revenue, low cost products of the mine than is the consist of the traffic in the western district (R. 366). The railroad, therefore, to some extent, compares the yield on Utah gondola traffic with box car traffic elsewhere.

Mr. Robert Crandall, a statistician for the Public Service Commission of Utah, introduced a yield study breaking down the consist of the traffic into four categories. This table was based upon a weigh bill study prepared by the Interstate Commerce Commission itself, and shows the following results:

Products	Revenue Per Ton Mile	
	Intrastate Cents	Interstate Cents
Manufactured and Miscellaneous	3.63	1.52
Agriculture	2.57	1.14
Animals	4.15	2.71
Mines	1.06	.74
Total of All Products	1.21	1.06

(R. 116)

The Interstate Commerce Commission in its order discounts the effect of this evidence by pointing out that intrastate hauls are on the average shorter than interstate hauls and the revenue should be higher to compensate for the fact that terminal expenses bear more heavily per ton mile on a short haul than on a long haul. While this is true and might account for the fact that the revenue per ton mile on the intrastate shipments

would be somewhat higher than on interstate shipments, it certainly cannot account for the fact that on products of the mines the intrastate revenue is 143% of the intrastate revenue on a ton mile basise, and on products of agriculture 225%, on animal products 153% and on manufactured and miscellaneous products 238%.

The appellants again urge on the Commission that the overwhelming weight of the evidence in this case establishes that Utah intrastate rates are already higher on comparable consists at comparable distances without the 15% increase, than are interstate rates with such increase.

Both the government and the intervening railroads in their brief stressed the so-called savings clause in the Interstate Commerce Commission Order which provides that:

> "Increases may not be made in intrastate rates to levels higher than the interstate rates on like traffic to or from Utah for like or greater short-line distances over the same lines of railroads, except in instances where the interstate rates, and not the intrastate rates, are designated as published to meet motor-carrier competition." (R. 119).

In our main brief we pointed out that this is an illusory protection because it is only on rare occasions where an interstate rate could be found over the same road and at a comparative distance as a measuring stock for the increase of intrastate rates. Counsel for the government maintains that we have taken this position without any evidence at all. The best evidence of this statment is found in exhibits of the witness Watson, Exhibits 24 to 30 inclusive (R. 471-500). Mr. Watson lists approximately 600 representative hauls for which commodity rates are in effect, approximately one-half of them intrastate, and approximately one-half interstate. As has been

pointed out above, in only a few instances are the mileage comparisons so that any comparison could be drawn. In the case of most intrastate commodity rates, there are no interstate rates of a like or lesser distance for the same commodity which could be used as a measuring stick. Once again therefore, we repeat, this limitation is illusory and means little.

EVIDENCE AS TO SIMILARITY OF CONDITIONS UNDER WHICH INTERSTATE AND INTRASTATE TRAFFIC MOVE

As is pointed out in the case of North Carolina v. United States, 325 U. S. 507; 89 L ed 1760, the railroads do not establish their burden of proof in a 13th Section case even if they were to prove—as we have pointed out above they did not do, the evidence being quite to the contrary—that interstate rates are higher on a comparable consist at a comparable haul than intrastate rates. This shows only one side of the picture. Rates must be related to the cost of moving the traffic which produces them. Therefore, when the railroad does not make a breakdown of its figures between interstate and intrastate, in addition to showing that the comparative situation is unfavorable to interstate commerce from a rate basis, the railroads must show that the factors affecting cost of handling intrastate traffic are not more favorable than those affecting interstate transportation. This appears to be the clear holding of King v. United States, 344 U.S. 254; 97 L ed 301, and Illinois Commerce Commission v. United States, 292 U.S. 474; 78 L ed 1381.

The commission in its report found that the conditions incident to the interstate transportation of freight in Utah are not more favorable than incident to the interstate transportation between Utah and adjoining states. We do not complain

of the sufficiency of the finding, but we do assert that there is no evidence to support such finding. The sole evidence as to this point, as we stated in our original brief, is evidence of certain railroad operating officials to the effect that interstate traffic and intrastate traffic are intermingled on the same trains, are handled over the same rails, through the same terminals and by the same crews. Neither counsel for the intervening railroads, nor counsel for the government in their briefs point to any evidence as to similarity of cost factors except this general testimony. They take the position, however, that such evidence is sufficient to establish such similarity of conditions, and it may well be that this is the principle point upon which this case will turn.

In our original brief, we stated that this was a matter that scarcely needed proof, but was a matter of common knowledge. The same thing is pointed out by Judge Christenson in his dissenting opinion (R. 59). Counsel for the intervening railroads asserts that this is not a matter of common knowledge, but is a matter which they proved by witnesses on the stand. We will agree that they did put witnesses on the stand to establish this point, but we say that such evidence was unnecessary because the Commission and the courts could take judicial notice of such matters of common knowledge and often have done so. It is certain that each member of this court was well aware of such fact long before reviewing the evidence in this case. Therefore, it is apparent that if such proof meets the requirements of the King case and the Illinois Commerce Commission case no evidence of the similarity of factors is necessary for they would always exist, and the requirement of North Carolina v. United States supra that the basis of federal jurisdiction must clearly appear from the record would be abrogated.

On page 20 of the brief of the United States and the Interstate Commerce Commission appears the following language:

> "It is possible, although not probable, that, notwithstanding identity in the character of interstate and intrastate operations there may exist special circumstances which affect interstate transportation solely or primarily and bring about higher or lower operating costs than for interstate transportation."

This is equivalent to saying that because of the fact that intrastate and interstate freight are intermingled, the burden of proof is on persons opposing the jurisdiction of the Commission to prove that factors affecting costs are different. This position is in direct contradiction of the following language in North Carolina v. United States, supra:

> "A scrupulous regard for maintaining the power of the State in this field has caused this court to require that the Interstate Commerce Commission's orders giving precedence to Federal rates must meet 'a high standard of certainty'. Illinois Central Railroad v. State Public Utilities Commission, 245 U.S. 493, 62 L. ed 425. Before the Commission can nullify a state rate, jurisdiction for the 'exercise of Federal power must clearly appear.' Florida v. U.S. 282, U.S. 194, 75 L.ed 291."

We again urge upon the court that the fact that intrastate and interstate traffic are intermingled does not establish that all factors affecting the reasonableness of the rate are the same. As we pointed out in our original brief, and as Judge Christenson points out in his dissenting opinion, this proof disregards the very essential element of density of traffic. Both the government brief and the railroads' brief admit that density of traffic is a factor which affects the costs of rendering service, but minimize it as one of many factors which can be disregarded, provided there is an intermingling of traffic. It is our

position that density is a major factor to be considered and may not be disregarded under the King case or the Illinois Commerce Commission case.

In commenting upon this matter Judge Christenson in his dissenting opinion stated:

> "No facts appear which make the conclusion rational that the density figures would, on any theory, represent a factor having no substantial bearing on the reasonableness of the respective rates.
>
> " * * * * The prevailing opinion places stress upon the evidence that there is no discrimination in the handling of intrastate and interstate freight shipments, since they are both handled on the same trains, by the same crews, and by the same departments and it is stated that 'Under such conditions, the contention of the plaintiffs has been rejected by the courts.' I cannot find that any court has gone to the extent of holding that such common treatment furnishes a basis of applying intrastate rate increases in the absence of evidence showing similar conditions with reference to all factors affecting rates." (R. 58, 59).

CONCLUSION

The holding of the Trial Court should be reversed, the Order of the Interstate Commerce Commission in this matter shoud be vacated, and the application of the increased rates enjoined.

Respectfully submitted,

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PROOF OF SERVICE

I, CALVIN L. RAMPTON, counsel of record for appellands, and a member of the bar of the Supreme Court of the United States, hereby certify that on the ..... day of December, 1957, I served, on behalf of the appellants herein, copies of the foregoing Appellants' Brief, as follows:

1. On the United States, by leaving a copy thereof at the office of A. Pratt Kesler, United States Attorney for the District of Utah, at Room 200 Federal Building, Salt Lake City, Utah, and by mailing a copy in a duly addressed envelope, with air mail postage prepaid to the Solicitor General, Department of Justice, Washington, D.C., and to Stanley N. Barnes, Assistant Attorney General, Department of Justice, Washington, D.C.

2. On the Interstate Commerce Commission, by mailing a copy in an addressed envelope, with air mail postage prepaid, to Robert W. Ginnane, Esq., General Counsel, and Charles H. Johnson, Assistant Counsel, at the offices of the Commission, Washington 25, D.C.

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No. 362

In the Supreme Court of the United States

OCTOBER TERM, 1956

PUBLIC SERVICE COMMISSION OF UTAH and UTAH CITIZENS RATE ASSOCIATION,
Appellants,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,
THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY,
UNION PACIFIC RAILROAD COMPANY,
SOUTHERN PACIFIC COMPANY,
THE WESTERN PACIFIC RAILROAD COMPANY,
UTAH RAILWAY COMPANY,
BAMBERGER RAILROAD COMPANY,
TOOELE VALLEY RAILWAY COMPANY,
SALT LAKE, GARFIELD AND WESTERN RAILWAY COMPANY,
THE OGDEN UNION RAILWAY AND DEPOT COMPANY,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

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No. ——

In the Supreme Court of the United States

OCTOBER TERM, 1956

PUBLIC SERVICE COMMISSION OF UTAH and UTAH CITIZENS RATE ASSOCIATION,

Appellants,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,
THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY,
UNION PACIFIC RAILROAD COMPANY,
SOUTHERN PACIFIC COMPANY,
THE WESTERN PACIFIC RAILROAD COMPANY,
UTAH RAILWAY COMPANY,
BAMBERGER RAILROAD COMPANY,
TOOELE VALLEY RAILWAY COMPANY,
SALT LAKE, GARFIELD AND WESTERN RAILWAY COMPANY,
THE OGDEN UNION RAILWAY AND DEPOT COMPANY,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

MOTION OF RAILROAD APPELLEES TO DISMISS OR AFFIRM

Pursuant to Rule 16, paragraph 1 (a), of the Revised Rules of this Court, appellees The Denver and Rio Grande Western Railroad Company; Union Pacific Railroad Company; Southern Pacific Company; The Western Pacific Railroad Company; Utah Railway Company; Bamberger Railroad Company; Tooele Valley Railway Company; Salt Lake, Garfield and Western Railway Company, and The Ogden Union Railway and Depot Company move (1) that the appeal be dismissed because not taken in conformity to the Rules of this Court, or (2) that the judgment of the district court be affirmed on the ground that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

(Appellants' jurisdictional statement was received by counsel for these appellees on June 26, 1956. This motion is being filed within thirty days from that date as permitted by this Court's Rule 16.1, although counsel for these appellees have not been advised whether the appeal has been docketed in this Court.)

STATEMENT

This is a direct appeal from a final judgment entered June 18, 1956, by the majority of a three-judge district court convened pursuant to 28 U. S. C. 2284, 2325, dismissing an action to set aside an order of the Interstate Commerce Commission. The order increased certain intrastate rail rates on freight moving within the State of Utah.

Following a nation-wide increase in interstate rail freight rates ordered by the Commission (*Increased Freight Rates, 1951*, 280 I. C. C. 179; 281 I. C. C. 557; 284 I. C. C. 589; 289 I. C. C. 395), rail carriers operating in Utah requested the Public Service Commission of Utah to grant comparable increases in Utah intrastate freight rates. The Utah Commission refused to do so and the railroads then petitioned the Interstate Commerce Commission to increase the intrastate rates in conformity with the increases ordered for interstate rates. After full administrative proceedings, the Commission, exercising its powers under Section 13(3) and (4) of the Interstate Commerce Act, 49 U. S. C. §13(3) and (4), issued an order granting the requested increases with certain minor exceptions. *Utah Intrastate Freight Rates and Charges*, 297 I. C. C. 86.

In a suit brought by appellants to enjoin, annul, and set aside the order, the three-judge district court sus-

tained the order (District Judge Christenson dissenting). The court (*per* Circuit Judge Pickett) held that the Commission's power to make the order "is not open to dispute" and that the order and the Commission's findings on which it is based "are supported by substantial evidence." (Copy of the majority and dissenting opinions, findings of fact, conclusions of law and final decree of the district court are attached hereto, since they are not appended to appellants' Jurisdictional Statement as required by this Court's Rule 15(h).)

ARGUMENT

1. The appeal should be dismissed because it is not taken in conformity to the Rules of this Court (see Rule 16, 1(a)).

The appeal papers, which were served on counsel for these appellees June 26, 1956, consist of a "notice" (which does not conform to, or embrace the contents of the "Notice of appeal" prescribed by this Court's Rule 10) a "petition for appeal," an "assignment of errors," an "order allowing appeal" (all of which are expressly abolished by Rule 10.4), and a "statement of jurisdiction," which omits essential statements and information required by Rule 15.

2. The judgment of the district court should be affirmed because the questions on which the decision of the cause depends are so unsubstantial as not to warrant further argument.

Section 13(4) of the Interstate Commerce Act authorizes the Commission to prescribe new intrastate rates if it finds that existing intrastate rates cause (1) unjust discrimination against interstate commerce, or (2) undue preference or prejudice against persons or localities in interstate commerce. The Commission based the order in

the instant case upon basic findings of facts from which it concluded that the Utah intrastate freight rates, with minor exceptions, caused unjust discrimination against interstate commerce.

After holding that the evidence was not sufficient to support a finding that the Utah intrastate rates caused undue prejudice against persons and localities in interstate commerce, the Commission said (297 I. C. C. 87, 104-105):

> "There remains the question of unlawful discrimination against interstate commerce. As noted, the respondents estimate that their annual revenues will be increased by approximately $1,880,000 if the Ex Parte No. 175 increases are added to the present intrastate rates. About 80 percent of that amount, it is estimated, would come from the intrastate movement of products of mines. This would leave some 20 percent, or $376,000, to be borne by other commodities.
>
> "The record is convincing that the transportation conditions affecting Utah intrastate traffic differ in no material respect from those affecting interstate traffic to and from that State, and that Utah intrastate traffic is no less able to bear the full increase sought than the interstate traffic. The Ex Parte No. 175 increases were authorized for interstate rail traffic throughout the country based upon the total revenue needs of the railroads generally, and have been made effective on interstate traffic generally as well as on intrastate traffic within most of the States. The railroads' need for additional revenue to meet increased operating expenses was the underlying basis for our decision in that proceeding. Those increased operating costs were not confined to interstate traffic, but were and are incurred also on Utah intrastate traffic."

The ultimate findings on which the order rests are set forth in the Commission's report, 297 I. C. C. 105-106, as follows:

"1. The conditions incident to the intrastate transportation of freight in Utah are not more favorable than those incident to the interstate transportation between Utah and adjoining States.

"2. The amounts and percentages by which interstate freight rates and charges between points in Utah and points in other States were increased, as authorized in Ex Parte No. 175, are just and reasonable.

"3. The present Utah intrastate rates and charges on carload and less-than-carload freight, except on sugar beets and beet-sugar final molasses destined to sugar factories, and excepting certain rates on coal, sheep, and cattle, hereinafter enumerated, imposed by authority of the State, are abnormally low, and traffic thereunder fails to produce its fair share of the earnings required to yield revenue sufficient to enable the respondents, under honest, economic, and efficient management, to provide adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service, and thereby accomplish the purposes of the Interstate Commerce Act, as set forth in the national transportation policy declared by the Congress to develop and preserve a national transportation system adequate to meet the needs of the commerce of the United States, of the postal service, and of the national defense. The burden thus cast upon interstate commerce is undue in and to the extent that these intrastate rates and charges are less than they would be on the bases herein prescribed; and these intrastate rates and charges cause, and for the future will cause, undue, unreasonable, and unjust discrimination against interstate commerce.

"4. The undue, unreasonable, and unjust discrimination herein found to exist should be removed by applying to the Utah intrastate rates and charges, on the commodities and traffic herein described, the same respective increases as are and for the future may be maintained by the respondents on like interstate traffic between points in Utah and adjoining States under our authorization in Ex Parte No. 175, provided that increases may not be made in intrastate rates to levels higher than the interstate rates on like traffic to or from Utah for like or greater short-line distances over the same lines of railroad, except in instances where the interstate rates, and not the intrastate rates, are designated as published to meet motor-carrier competition.

"5. The establishment of increases in intrastate rates and charges as prescribed in finding 4 will not result in unreasonable rates, or rates that are unreasonable in relation to interstate rates, and will substantially increase the respondents' annual revenues.

"6. The increased revenues to the respondents which will result from the increased rates and charges as provided in finding 4 are required from intrastate traffic in Utah in order to enable the respondents to provide adequate and efficient railway transportation service.

"7. In certain instances it appears that the present Utah intrastate rates are now as high as corresponding interstate rates including the Ex Parte No. 175 increases for comparable distances. The intrastate rates specified below, are excepted from the findings herein:

Rates on sugar beets or beet-sugar final molasses destined to sugar factories.

Rates on coal, viz:

From Castle Gate to Milford, Utah, slack and other sizes.

From Castle Gate to Lund, Utah, slack and other sizes.

From Castle Gate to Devil's Slide, Utah, slack.

Rates on sheep, in double-deck cars, viz:

From Lakeside to Wahsatch, Utah.

From Cedar City to Kaysville, Utah.

Rates on cattle in single-deck cars, viz:

From Spanish Fork to Ogden, Utah.

The foregoing findings relate to Utah intrastate rates generally, and are without prejudice to reexamination, upon complaint or otherwise, as to the lawfulness of any individual Utah intrastate rate on any particular commodity."

Findings identical in substance were held by this Court in *King v. United States,* 344 U. S. 254, to afford an adequate basis for a Commission order designed to remove unjust discrimination against interstate commerce, which increased Florida intrastate rates in conformity with increases required in interstate rates to produce revenues necessary to enable the railroads to render adequate service contemplated by the Interstate Commerce Act. At page 275, the Court said—

"* * * the Commission states that the Florida intrastate rates 'are abnormally low and are not contributing their fair share to the revenues required * * * to render adequate and efficient service and to operate profitably, and thereby accomplish the purpose of the Interstate Commerce Act * * *' Finding No. 5, 278 I. C. C. at 72. Also, in finding No. 6, it says that the establishment of the proposed increases in intrastate rates 'will substantially increase respondents' revenues therefrom, and will constitute not

more than a fair proportion of respondents' total income * * *" *Id.*, at 73. More is not needed. It is not necessary, for general revenue purposes, to establish for each item in each freight rate a fully developed rate case."

Following that decision, this Court, *per curiam*, vacated the judgment of a three-judge district court for the District of Montana, which had enjoined a similar order of the Commission, and remanded the case to the district court for further proceedings in the light of the *King* decision, *Northern Pacific Railway Co., et al., v. Montana, et al.*, 344 U. S. 905.

Motions to affirm decisions of three-judge district courts sustaining Thirteenth Section orders of the Commission requiring increases in intrastate rates in conformity with those authorized for interstate rates in Ex Parte 175, which is the subject of the instant order, were granted by this Court *per curiam* in *Louisiana Public Service Commission, et al., v. United States, et al.*, 348 U. S. 885, and in *State of North Carolina, et al., v. United States of America, et al.*, 350 U. S. 805, 76 S. Ct. 45, which the district court in the instant case said "was the same as the one before us" (*infra*, page 25). Other cases in which this Court has recently affirmed, *per curiam*, judgments of three-judge district courts sustaining Thirteenth Section orders of the Commission are *New York v. United States*, 342 U. S. 882, and *Illinois et al v. United States et al.*, 342 U. S. 930.

The three-judge district court in the instant case correctly held that the Commission's power to establish intrastate rates in order to remove unjust discrimination against interstate commerce "is not open to dispute," and that the order is adequately supported by the Com-

mission's findings which "are supported by substantial evidence." On the latter question, the court (*infra*, page 22) held—

> "The principal contention of the plaintiffs is that the evidence does not sustain the finding that the existing intrastate rates cause undue, unreasonable and unjust discrimination against interstate commerce. It is said that the evidence fails because there has been no separation of interstate and intrastate costs and revenues. The evidence is to the effect that there is no distinction in the handling of interstate and intrastate freight shipments. They are both handled on the same trains, by the same crews; the same accounting department, the same traffic department, and the same facilities are used in the dispatch of both shipments. Under such conditions, the contention of the plaintiffs has been rejected by the courts."

Further discussing the sufficiency of the evidence to establish unjust discrimination against interstate commerce, the district court said (*infra*, pages 23-24):

> "In finding that such a burden and discrimination existed, the Commission did not rely entirely on the disparity in rates. It was shown that the conditions under which interstate and intrastate traffic move were substantially the same with respect to all factors bearing on the reasonableness of the rates. The railroads' general need for additional revenue was established in Ex Parte 175. There is evidence to the effect that the earnings on the railroads' investments in Utah are below the national average. The economic ability of the Utah traffic to bear the 15% increase found necessary in Ex Parte 175 was shown. The economic conditions in Utah in 1950 had improved greatly over the preceding period, both actually and relatively. Wages were higher than the national average; higher wages and costs of opera-

tion which the railroads had to pay in Utah and elsewhere were shown; there had been a substantial increase in the railroads' property investment in the State, while there was a decrease in net operating income. The cost of handling intrastate shipment was found to be as great, if not greater, than the handling of interstate freight. The percentage of return on net investment of the railroads in Utah was 3.82% in 1953, as compared with 3.98% in 1948, 2.58% in 1949; 4.33% in 1950, 3.66% in 1951, and 3.91% in 1952. The record also shows that in 1952 the revenue per ton mile of railroads in the United States was 1.43 cents; in the Western District, 1.393 cents; and in the Mountain Pacific states, which includes Utah, 1.398 cents per ton mile; and in the State of Utah, on intrastate and interstate traffic, 1.258 cents per ton mile. The total annual loss to the railroads caused by the failure to grant the requested increase in Utah was estimated at $1,880,347."

Appellants, in their "assignment of errors," press in this Court their contention that the findings and order of the Commission are not supported by substantial evidence. But this Court has indicated that the initial reviewing court has "primary responsibility," *Labor Board v. Pittsburgh S. S. Co.*, 340 U. S. 498, 502, for determining "[w]hether on the record as a whole there is substantial evidence to support agency findings," and that it will re-examine the record only in the "rare instance" where the reviewing court has "misapprehended or grossly misapplied" the governing criteria, *Universal Camera Corp. v. Labor Bd.* 340 U. S. 474, 491. While appellants' assignment of errors charges the district court with error in failing to hold that the evidence was insufficient to support the findings and order, the alleged errors amount to no more than a charge that the majority of the district court should have abandoned its review-

ing function and joined with the dissenting district judge in a process of weighing and appraising the evidence for the purpose of reaching conclusions contrary to those of the Commission. This the majority of the district court quite correctly refused to do and instead adhered to rules of judicial review laid down by this Court as shown by recitals and authorities cited in the majority opinion (*infra*, pages 20-22).

The majority opinion below clearly shows that the voluminous record of evidence before the Commission was thoroughly considered and analyzed by the district court and there is no reason or special circumstance which would warrant a recanvassing of the record by this Court. See *New England Divisions Case*, 261 U. S. 184, 203-204; *Radio Corp. v. United States*, 341 U. S. 412, 415; cf. *United States v. Yellow Cab Co.*, 338 U. S. 338, 342. The fact that there may be evidence in the record from which another trier of the facts might have reached a conclusion contrary to that of the Commission affords no basis for overturning the Commission's order. See *U. S. v. Detroit Navigation Co.*, 326 U. S. 236, 241; *U. S. v. Pierce Auto Lines*, 327 U. S. 515, 536.

We submit that the sufficiency and the substantiality of the evidence to support the order are demonstrated in the majority opinion below, but if more is needed to convince this Court that appellants' contention in this respect is without substance, it will readily be gleaned from the extensive report of the Interstate Commerce Commission, 297 I. C. C 87, which not only portrays the need of the Utah railroads for additional revenue to be derived from the intrastate traffic, but also the detailed evidence concerning the intrastate rates on numerous commodities including coal, iron ore, manufactured iron,

and steel articles, lead and zinc ores and concentrates, uranium and vanadium ores, waste materials for remelting, clay and bentonite, sand and gravel, lime rock, fuel and road oil, gasoline, cement, sugar, wheat, animal and poultry feed, sheep and goats, cattle and calves and class and merchandise rates.

Appellants' contention that the evidence fails to support the order because there was no separation of interstate from intrastate expenses and revenues of the railroads was properly rejected by the majority of the district court upon the facts found by the Commission and the authorities cited in the majority opinion, *infra*, page 22, including decisions of this Court.

The unsubstantiality of the questions presented by the appeal is sharply illustrated by its assignment of error number 8, contending that the order under attack in the instant case is void because the Commission allegedly acted contrary to law in authorizing a "flat" 15 per cent increase for interstate rates in Ex Parte 175. The refusal of the majority of the district court to permit a collateral attack upon the order in the latter proceeding is based upon ample authorities cited in the opinion, *infra*, pages 26-27.

Appellants' contention that the instant order is void because it "eliminates state jurisdiction over intrastate rates" was long since rejected by this Court in decisions cited in the majority opinion below, *infra*, pages 20-22.

Other contentions posed in the "assignment of errors" rest largely upon appellants' erroneous view that the majority of the district court indulged in certain untenable presumptions which the opinion clearly shows it

did not. At most, appellants' "assignment of error" amounts essentially to a quarrel with the lower court's refusal to usurp the Commission's exclusive function of weighing and appraising various items of evidence for the purpose of reaching conclusions contradicting those of the Commission.

CONCLUSION

For the foregoing reasons, we submit—

(1) that the appeal should be dismissed because it was not taken in conformity to the rules of this Court, or

(2) that the judgment of the three-judge district court should be affirmed because the questions on which the decision of the cause depends are so unsubstantial as not to warrant further argument.

Respectfully submitted,

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PROOF OF SERVICE

I, ELMER B. COLLINS, counsel of record for railroad appellees herein, and a member of the bar of the Supreme Court of the United States, hereby certify that on the 25th day of July, 1956, I served, on behalf of all railroad appellees herein, copies of the foregoing Motion on the several adverse parties thereto, as follows:

1. On the Public Service Commission of Utah by mailing a copy in a duly addressed envelope with air mail postage prepaid to:

E. R. Callister, Esq.
Attorney General of Utah
Salt Lake City, Utah

2. On the Utah Citizens Rate Association by mailing a copy in a duly addressed envelope with air mail postage prepaid to:

Calvin L. Rampton, Esq.
721 Continental Bank Building
Salt Lake City, Utah

ELMER B. COLLINS,
Counsel of Record for Railroad Appellees.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

CIVIL ACTION NO. C-8-56

PUBLIC SERVICE COMMISSION OF UTAH and UTAH CITIZENS RATE ASSOCIATION,

Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,

Defendants;

and

UNION PACIFIC RAILROAD COMPANY, THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, SOUTHERN PACIFIC COMPANY, THE WESTERN PACIFIC RAILROAD COMPANY, BAMBERGER RAILROAD COMPANY, THE OGDEN UNION RAILWAY AND DEPOT COMPANY, SALT LAKE-GARFIELD AND WESTERN RAILROAD COMPANY, TOOELE VALLEY RAILWAY COMPANY, and UTAH RAILWAY COMPANY,

Intervenors.

OPINION

E. R. Collister, Attorney General; Raymond W. Gee, Deputy Attorney General; Keith E. Sohm, Commerce Attorney, Salt Lake City, Utah, for plaintiff Public Service Commission; Calvin L. Rampton Salt Lake City, Utah, for plaintiff Utah Citizens Rate Association;

Stanley N. Barnes, Assistant Attorney General; James E. Kilday, E. Riggs McConnell, Attorneys Depart-

ment of Justice, Washington, D. C., and A. Pratt Kesler, United States Attorney, Salt Lake City, Utah, for defendant United States of America; Robert W. Ginnane, General Counsel, Charlie H. Johns, Assistant Counsel, I. C. C., Washington, D. C., and George W. Howard, Salt Lake City, Utah, for defendant Interstate Commerce Commission;

Bryan P. Leverich, S. N. Cornwall, A. H. Nebeker, Peter W. Billings, John H. Snow, A. S. Frederickson, and J. E. Morgan, Salt Lake City, Utah, for Intervening Defendants.

Before Pickett, United States Circuit Judge, Ritter, Chief Judge, and Christenson, United States District Judges.

Pickett, United States Circuit Judge.

The Public Service Commission of the State of Utah and the Utah Citizens Rate Association brought this action to set aside and enjoin the enforcement of an order of the Interstate Commerce Commission granting an increase of intrastate freight rates in Utah in a proceeding under Sec. 13 (3) and (4) of the Interstate Commerce Act. 49 U. S. C. A., Sec. 13 (3), (4).[1] The Class I

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1 49 U. S. C. A., Sec. 13(4), reads as follows:

"Whenever in any such investigation the commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes an undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding."

railroads operating in Utah intervened. A statutory three-judge court was constituted and an interlocutory injunction granted pending a hearing on the merits of the case.

The underlying proceedings which give rise to this action originated in 1951 before the Interstate Commerce Commission, entitled "Increased Freight Rates 1951," herein referred to as "Ex Parte 175," wherein Class I railroads of the United States sought an overall increase in interstate freight rates. After some percentage increases had been authorized, the Commission, on April 11, 1952, granted increases totaling 15% to all railroads on interstate rates. 284 I. C. C. 589. This increase was subject to certain exceptions and hold-downs. The railroads operating in Utah made application to the Public Service Commission of Utah for increases in intrastate rates in the same percentage as those granted in Ex Parte 175.

The Utah Commission refused to grant the increases and Section 13 proceedings were instituted before the Interstate Commerce Commission, which entered into an investigation of the Utah intrastate rates. A full and complete hearing was had, at which evidence was offered by the railroads and by protestants, including these plaintiffs. The Interstate Commerce Commission, with exceptions, found that the Utah intrastate rates and charges were abnormally low; that conditions incident to intrastate transportation in Utah were not more favorable than those incident to interstate transportation in that state; that traffic thereunder failed to produce its fair share of earnings required to yield the railroads sufficient revenue to provide adequate and efficient railway transportation service to accomplish the purposes of the Interstate Commerce Act, and that Utah intrastate rates cast an undue burden upon interstate commerce. 297 I.

C. C. 87.[2] It was also found that the undue burden and un-

2 The Commission's findings (297 I. C. C. 105), are as follows:

"1. The conditions incident to the intrastate transportation of freight in Utah are not more favorable than those incident to the interstate transportation between Utah and adjoining States.

"2. The amounts and percentages by which interstate freight rates and charges between points in Utah and points in other States were increased, as authorized in Ex Parte No. 175, are just and reasonable.

"3. The present Utah intrastate rates and charges on carload and less-than-carload freight, except on sugar beets and beet-sugar final molasses destined to sugar factories, and excepting certain rates on coal, sheep, and cattle, hereinafter enumerated, imposed by authority of the State, are abnormally low, and traffic thereunder fails to produce its fair share of the earnings required to yield revenue sufficient to enable the respondents, under honest, economic, and efficient management, to provide adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service, and thereby accomplish the purposes of the Interstate Commerce Act, as set forth in the national transportation system adequate to meet the needs of the commerce of the United States, of the postal service, and of the national defense. The burden thus cast upon intrastate rates and charges are less than they would be on the bases herein prescribed; and these intrastate rates and charges cause, and for the future will cause, undue, unreasonable, and unjust discrimination against interstate commerce.

"4. The undue, unreasonable, and unjust discrimination herein found to exist should be removed by applying to the Utah intrastate rates and charges, on the commodities and traffic herein described, the same respective increases as are and for the future may be maintained by the respondents on like interstate traffic between points in Utah and adjoining States under our authorization in Ex Parte No. 175, provided that increases may not be made in intrastate rates to levels higher than the interstate rates on like traffic to or from Utah for like or greater short-line distances over the same lines of railroad, except in instances where the interstate rates, and not the intrastate rates, are designated as published to meet motor-carrier competition.

"5. The establishment of increases in intrastate rates and charges as prescribed in finding 4 will not result in unreasonable rates, or rates that are unreasonable in relation to interstate rates, and will substantially increase the respondents' annual revenues.

(Continued on next page)

just discrimination should be removed by applying to the Utah intrastate rates and charges the interstate increase authorized in Ex Parte 175 on like intrastate traffic. The increases, however, were limited by the provision "that increases may not be made in intrastate rates to levels higher than the interstate rates on like traffic to or from Utah for like or greater short-line distances over the same lines of railroad, except in instances where the interstate rates, and not the intrastate rates, are designated as published to meet motor-carrier competition." It is conceded that the findings meet the requirements of King v. United States, 344 U. S. 254, but it is urged that the evidence does not sustain them.

The Utah Commission did not authorize the increases within the time provided in the order and the railroads were then directed by the Interstate Commerce Commission to make the 15% increase effective on Utah intrastate rates as of March 13, 1956. This action followed.

(Continued from preceding page)

"6. The increased revenues to the respondents which will result from the increased rates and charges as provided in finding 4 are required from intrastate traffic in Utah in order to enable the respondents to provide adequate and efficient railway transportation service.

"7. In certain instances it appears that the present Utah intrastate rates are now as high as corresponding interstate rates, including the Ex Parte No. 175 increases for comparable distances. The intrastate rates specified below, are excepted from the findings herein:

"Rates on coal, viz:
"From Castle Gate to Milford, Utah, slack and other sizes.
"From Castle Gate to Lund, Utah, slack and other sizes.
"From Castle Gate to Devil's Slide, Utah, slack.

"Rates on sheep, in double-deck cars, viz:
"From Lakeside to Wahsatch, Utah.
"From Cedar City to Kaysville, Utah.

"Rates on cattle, in single-deck cars, viz:
"From Spanish Fork to Ogden, Utah."

The matter is before us on the record of the Interstate Commerce Commission proceedings under Section 13. At the opening of the trial the plaintiffs introduced in evidence the Interstate Commerce Commission records and, in addition, offered the record of proceedings made before the Public Service Commission of Utah. The court reserved ruling on the admissibility of the latter record, which had not been introduced in the proceedings before the Commission. It is well settled that when an order of the Interstate Commerce Commission is questioned in an action of this nature, the court shall consider only such matters as were before the Commission prior to the issuance of its order. Tagg Bros. & Moorehead v. United States, 280 U. S. 420, 443; Louisville & Nashville R. Co. v. United States, 245 U. S. 463, 466; New York v. United States, 331 U. S. 284, 335; Sakis v. United States, 103 F. Supp. 292, App. Dismissed, 344 U. S. 801. The record in the State proceeding is irrelevant and the objection to its admission in evidence is sustained.

The power of Congress to authorize the Interstate Commerce Commission to establish intrastate rates in order to remove unjust discrimination against interstate commerce is not open to dispute. The plaintiffs here do not question that power, although they do question the reasonableness of the increases in Ex Parte 175. See King v. United States, 344 U. S. 254, 274; Florida v. United States, 282 U. S. 194, 211. It appears quite clear that Congress intended that the railway system of the country shall have a reasonable return to carry out the purposes of the Interstate Commerce Act, which would include compensation for intrastate business reasonably proportionate with the interstate business. Wisconsin R. Commission v. Chicago, B. & Q. R. Co., 257 U. S. 563,

588; Illinois Commerce Commission v. United States, 292 U. S. 474, 483. The fundamental purpose of the Congress in enacting Section 13, subdivisions (3) and (4), was to reach intrastate rates that were found to result in unjust discrimination against interstate commerce. Florida v. United States, 282 U. S. 194, 210. The purpose of Section 13(4) is not limited to the removal of unjust and unreasonable discriminations against interstate commerce as it relates to persons and localities, but it imposes on the commission the affirmative duty "to take other important steps to maintain an adequate railway service for the people of the United States." Wisconsin R. R. Commission v. C., B. & Q. R. Co., 257 U. S. 563, 585; Florida v. United States, 282 U. S. 194.

In determining the validity of an order of this nature, a reviewing court may not weigh the evidence; it may not negative the action of the Commission, being "one of those agencies presumably equipped or informed by experience to deal with the specialized field of knowledge, whose findings within that field carry the authority of an expertness which courts do not possess and therefore must respect," if from a consideration of the entire record there is a rational basis for the action. Universal Camera Corp. v. Labor Board, 340 U. S. 474, 488. The court may set aside the order, "when it cannot conscientiously find that the evidence supporting that decision is substantial, when viewed in the light that the record in its entirety furnishes, including the body of evidence opposed to the Board's View." Universal Camera Corp. v. Labor Board, supra.

In Interstate Commerce Commission v. Jersey City, 322 U. S. 503, 513, it was said: "* * * 'So long as there

is warrant in the record for the judgment of the expert body it must stand. * * * The judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body.' Rochester Telephone Corp. v. United States, 307 U. S. 125, 145-46; Miss. Valley Barge Line Co. v. United States, 292 U. S. 282, 286-87."

The principal contention of the plaintiffs is that the evidence does not sustain the finding that the existing intrastate rates cause undue, unreasonable and unjust discrimination against interstate commerce. It is said that the evidence fails because there has been no separation of interstate and intrastate costs and revenues. The evidence is to the effect that there is no distinction in the handling of interstate and intrastate freight shipments. They are both handled on the same trains, by the same crews; the same accounting department, the same traffic department, and the same facilities are used in the dispatch of both shipments. Under such conditions, the contention of the plaintiffs has been rejected by the courts. King v. United States, supra; Illinois Commerce Commission v. United States, supra; State of North Carolina v. United States, 128 F. Supp. 718, Aff. 350 U. S. 805. In the Illinois Commerce case, the court said (292 U. S. 474, 483-484):

> "Where the conditions under which interstate and intrastate traffic move are found to be substantially the same with respect to all factors bearing on the reasonableness of the rate, and the two classes are shown to be intimately bound together, there is no occasion to deal with the reasonableness of the intrastate rates more specifically, or to separate intrastate and interstate costs and revenues."

This does not mean that there must be a uniformity in interstate and intrastate rates. Intrastate transportation is primarily the concern of the state. The Interstate Commerce Commission is without authority to supplant intrastate rates unless there are findings supported by evidence that conditions exist which may bring Sec. 13(4) into play. To authorize an interference with intrastate rates, it must be shown that the intrastate and interstate traffic are intimately bound together; that the conditions incident to intrastate transportation are no more favorable than those incident to interstate traffic, and that the intrastate rates involved are abnormally low and are not contributing their fair share of the revenue to which the railroads are entitled. The mere existence of a disparity in rates is not enough to warrant interference by the Interstate Commerce Commission. North Carolina v. United States, 325 U. S. 507, 516. The State Commission has complete control of intrastate rates so long as those rates do not unduly burden or discriminate against interstate commerce.

In finding that such a burden and discrimination existed, the Commission did not rely entirely on the disparity in rates. It was shown that the conditions under which interstate and intrastate traffic move were substantially the same with respect to all factors bearing on the reasonableness of the rates. The railroads' general need for additional revenue was established in Ex Parte 175. There is evidence to the effect that the earnings on the railroads' investments in Utah are below the national average. The economic ability of the Utah traffic to bear the 15% increase found necessary in Ex Parte 175 was shown. The economic conditions in Utah in 1950 had improved greatly over the preceding period, both actually

and relatively. Wages were higher than the national average; higher wages and costs of operation which the railroads had to pay in Utah and elsewhere were shown; there had been a substantial increase in the railroads' property investment in the State while there was a decrease in net operating income. The cost of handling intrastate shipment was found to be as great, if not greater, than the handling of interstate freight. The percentage of return on net investment of the railroads in Utah was 3.82% in 1953, as compared with 3.98% in 1948, 2.58% in 1949; 4.33% in 1950, 3.66% in 1951, and 3.91% in 1952. The record also shows that in 1952 the revenue per ton mile of railroads in the United States was 1.43 cents; in the Western District, 1.393 cents; and in the Mountain Pacific states, which includes Utah, 1.398 cents per ton mile; and in the State of Utah, on intrastate and interstate traffic, 1.258 cents per ton mile. The total annual loss to the railroads caused by the failure to grant the requested increase in Utah was estimated at $1,880,347.[3]

In State of North Carolina v. United States, 128 F. Supp. 718, Aff. 350 U. S. 805, the state sought to nullify an order of the Interstate Commerce Commission, apply-

3 In Illinois Commerce Comm'n. v. United States, 292 U. S. 474, 479, the court said:

"The scope and application of Sec. 13(4) have so recently been fully considered in opinions of this Court in United States v. Louisiana, 290 U. S. 70; Florida v. United States, ante, p. 1; see also Georgia Public Service Comm. v. United States, 283 U. S. 765; Florida v. United States, 282 U. S. 194; that it is unnecessary to repeat that discussion here. Under 13(4) of the Interstate Commerce Act, the Interstate Commerce Commission is given plenary power to remove the discrimination created by intrastate rates so that the intrastate traffic may produce its fair share of the revenue required to meet maintenance and operating costs and to yield a fair return on the value of property devoted to the transportation service."

ing the Ex Parte 175 rates to intrastate freight in North Carolina. There may be some varying conditions, but on the whole the case was the same as the one before us. In answering the argument that the record did not disclose that the intrastate rates resulted in an undue discrimination against interstate commerce, the court said (P. 722, 723):

> "Plaintiffs contend that there was no sufficient showing of discrimination aainst interstate commerce and in favor of intrastate commerce resulting from the intrastate rates. It appears, however, that, without the Ex Parte No. 175 increases on any of their traffic in 1953, the return on net investment in 1953 for the four principal carriers receiving 87% of the intrastate revenue would have been 0.94% for the Norfolk Southern, 4.63% for the Seaboard, 4.35% for the Southern and a deficit of more than $4,000,000 for the Atlantic Coast Line, or a combined return for the four roads of 2.84%. This is not a case, then, as plaintiffs argue, where an unnecessary increase was granted in a prosperous territory because of a need in other sections. The need for increase existed in North Carolina as these figures show, and the Commission estimated that the total loss from the non-application of the increase in 1953 was $1,500,000. As the cost of handling intrastate freight was shown to be as great as or greater than the handling of interstate freight, the raising of interstate rates without raising intrastate rates necessarily resulted in throwing an undue share of the cost of the service upon interstate transportation. As said by Mr. Justice Stone in Illinois Commerce Commission v. United States, 292 U. S. 474, 485, 54 S. Ct. 783, 787, 78 L. Ed. 1371, 'The effect of maintaining a lower rate, intrastate, than the reasonable interstate rate is necessarily discriminatory wherever the two classes of traffic, inextricably intermingled, are carried on, as in the District, under substantially the same conditions.'

"'In Railroad Commission of State of Wisconsin v. Chicago, B. & Q. R. Co., 257 U. S. 563, 568, 42 S. Ct. 232, 236, 66 L. Ed. 371, Chief Justice Taft, speaking for the court, said:

> "'If the railways are to earn a fixed net percentage of income, the lower the intrastate rates, the higher the interstate rates may have to be. The effective operation of the act will reasonably and justly require that intrastate traffic should pay a fair proportionate share of the cost of maintaining an adequate railway system. * * * If that purpose is interfered with by a disparity of intrastate rates, the Commission is authorized to end the disparity by directly removing it, because it is plainly an "undue, unreasonable, and unjust discrimination against interstate or foreign commerce" within the ordinary meaning of those words.' * * *"'

In similar cases concerning the same matter, Louisiana Public Service Commission v. United States, 125 F. Supp. 180, Aff. 348 U. S. 885, sustained the order of the Interstate Commerce Commission, and Mississippi Public Service Commission v. United States, 124 F. Supp. 809, Aff. 349 U. S. 908, with one judge dissenting, set aside and enjoined the enforcement of the order.

Plaintiffs' contention that the order relating to the Utah intrastate rates is invalid because of the flat percentage increase of 15% in Ex Parte 175, with a savings clause, was contrary to law, is without merit. The validity of the Commission's order in Ex Parte 175 is not subject to a collateral attack. Callanan Road Co. v. United States, 345 U. S. 507, 512; Securities & Exchange Commission v. Central-Illinois Securities Corp., 338 U. S. 96, 143; City of Tulsa v. Midland Valley R. Co., 168 F. 2d 252. The determination of just and reasonable rates

is for the Commission, not the courts. Montana-Dakota Utilities Co. v. Public Service Commission, 341 U. S. 246, 251; Swayne & Hoyt. Ltd. v. United States, 300 U. S. 297, 304; Interstate Commerce Commission v. Illinois Central R. R. Co., 215 U. S. 452, 470; Manufacturers Ry. Co. v. United States, 246 U. S. 457, 481; Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co. 204 U. S. 426. The courts, in appropriate cases, have upheld flat horizontal percentage rate increases which contained a savings clause to prevent injustices. United States v. State of Louisiana, 290 U. S. 70; The New England Divisions Case, 261 U. S. 184, 187; Wisconsin R. Commission v. Chicago, B. & Q. R. Co., supra.

The plaintiffs urge that the record discloses that the Utah intrastate rates, without the 15% increase, are contributing more, not less, than their fair share of the overall revenue needs of the railroads. The Commission did not so find. While the exhibits, in some instances, show intrastate rates equal to or even higher than interstate service, this may result from varying causes which are not material here. The clear import of the Commission's order is that increases in intrastate rates shall not be made to levels higher than interstate rates for like traffic. The order is also without prejudice to a reexamination as to the lawfulness of any individual Utah intrastate rate on any particular commodity.

We have considered the voluminous record and conclude that the findings of the Commission are supported by substantial evidence. The complaint is dismissed and the interlocutory injunction dissolved; costs to be assessed to the plaintiffs.

Dated this 23 day of May, 1956.

/s/ John C. Pickett
Circuit Judge

/s/ Willis W. Ritter
District Judge

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District Judge.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

CIVIL ACTION NO. C-8-56

PUBLIC SERVICE COMMISSION OF UTAH and UTAH CITIZENS RATE ASSOCIATION,

Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,

Defendants;

and

UNION PACIFIC RAILROAD COMPANY, THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, SOUTHERN PACIFIC COMPANY, THE WESTERN PACIFIC RAILROAD COMPANY, BAMBERGER RAILROAD COMPANY, THE OGDEN UNION RAILWAY AND DEPOT COMPANY, SALT LAKE-GARFIELD AND WESTERN RAILROAD COMPANY, TOOELE VALLEY RAILWAY COMPANY, and UTAH RAILWAY COMPANY,

Intervenors.

CHRISTENSON, District Judge (Dissenting)

I dissent from the holding of the majority that there is substantial evidence in the record supporting the order of the Interstate Commerce Commission in this case. There is agreement upon all of the other points decided and with the statement of principles contained in the prevailing opinion. It is submitted, however: (I) that the decisions of the Supreme Court of the United States

do not warrant the applications made; (II) that the record itself does not furnish any substantial basis for the Commission's ultimate findings; (III) that to bring the case within the doctrine of *Illinois Commerce Commission et al v. United States et al.*, 292 U. S. 474, 54 S. Ct. 783, 78 L. Ed. 1371, unauthorized presumptions would have to be indulged and evidence not before the Court would have to be assumed; and (IV) that the rationale of the decision would mean that increases applied nationwide by the Interstate Commerce Commission, coupled with matters of common knowledge and unwarranted presumptions concerning the inter-relationship of interstate and intrastate traffic, automatically justify corresponding intrastate increases at the will of the Interstate Commerce Commission—a result at once inconsistent with the relationship between affairs national and local, at variance with controlling decisions, and not in keeping with the national transportation policy itself. The far-reaching issue thus presented will excuse—I believe that it requires—my presuming to state views on the foregoing points as they differ from those of my respected colleagues.

I.

The prevailing opinion properly recognizes that there need not be uniformity in interstate and intrastate rates; that intrastate transportation is primarily the concern of the state; and that the Interstate Commerce Commission is without authority to supplant intrastate rates unless there are findings supported by evidence that conditions exist which bring Section 13(4) of the Interstate Commerce Act, 49 U. S. C. A. 13(4), into operation. The most direct and positive way to show jurisdictional facts in dispute here would be to break down operating figures, both as to income and expense, on an intrastate basis in order to permit comparison with corresponding inter-

state figures. The railroads have said that this is impracticable, and no doubt it is in many cases. The decision in *Illinois Commerce Commission et al. v. United States et al. supra,* dispenses with the necessity of producing such figures if certain other facts are shown to exist. The rule requiring such other showing in the absence of the type of direct evidence mentioned is not a mere generality obviating the need of proof. It is a substitute formula to be looked to for the establishment of jurisdiction if, and only if, the elements on which the formula is premised be established.

Illinois stands for the proposition that where the conditions under which interstate and intrastate traffic move are found to be substantially the same with respect to all factors bearing on the reasonableness of the rate, and the two classes are shown to be intimately bound together, there is no occasion to deal with the reasonableness of the intrastate rates more specifically, or to separate intrastate and interstate costs and revenues. It must be noted that it is not sufficient in order to justify the application of this doctrine that the two classes are intimately connected, and it is not sufficient that some conditions affecting the respective rates have common application. It must also appear that conditions are substantially the same with respect to all factors bearing on reasonableness or that conditions incident to the intrastate transportation of freight are not more favorable than those incident to interstate transportation, which latter idea will be included in the concept of "sameness" hereinafter referred to. Logically, as well as from the language of the decision, this seems inescapable. A substantial divergence of some, though not most, of the factors would destroy the very basis of the formula. It should be further observed that in *Illinois Commerce Commis-*

sion et al. v. United States et al., supra, there was involved a somewhat different factual problem than is presented here. The rates were not statewide, but covered the "Chicago Switching District." The district was essentially a unit as far as switching operations were concerned. Movements were chiefly between local industries and involved a complete service originating and terminating within the district, although the district was intersected by the boundary between the states of Illinois and Indiana.

King et al. v. United States et al., 344 U. S. 254, 73 S. Ct. 259, 97 L. Ed. 301, determined that the Interstate Commerce Commission in prescribing intrastate freight rates for railroads under Section 13(4) of the Interstate Commerce Act, may give weight to deficits in passenger revenue. The Court held that there was no evidence which would require the Commission to treat Florida intrastate rates differently from interstate rates in southern territory. It was pointed out that whereas, in *State of North Carolina v. United States*, 325 U. S. 507, 65 S. Ct. 1260, 89 L. Ed. 1760, there was evidence to indicate that the conditions in that state were more favorable to profitable intrastate transportation of passengers than in the nation at large, the Commission's findings in the King case were to the contrary. No question was raised as to the adequacy of the evidence upon which the findings were based and thus, this case is not very helpful on the crucial problem here.

In *State of North Carolina v. United States, supra,* the principles are laid down that intrastate transportation is primarily the concern of the state; that the power of the Interstate Commerce Commission with reference to such intrastate rates is dominant only so far as neces-

sary to alter rates which injuriously affect interstate transportations; that before the Commission can nullify a state rate, justification for the exercise of the federal power must clearly appear; and that the Interstate Commerce Commission is without authority to supplant a state-prescribed intrastate rate unless there are clear findings, supported by evidence of each element essential to the exercise of that power by the Commission. In the light of these principles, the Supreme Court examined the sufficiency of the Commission's findings and found them sufficient to support the order of the Commission. It stated (p. 512):

> "'In effect, the Commission's holding was, and its argument is here, that § 13(4) automatically requires complete uniformity in intrastate and interstate rates. That argument is in short that under our national transportation system interstate travelers and intrastate travelers use the same trains; for a state to fix a lower intrastate rate than the interstate rate is therefore an undue advantage to the intrastate passengers and an unfair discrimination against the interstate passengers. If Congress intended to permit such an oversimplified form of proof to establish 'unjust discrimination', then its requirement for a 'full hearing' was mere surplusage.'"

Emphasizing the necessity that the basis of federal jurisdiction appears, it is further said (p. 511):

> "* * * A scrupulous regard for maintaining the power of the state in this field has caused this Court to require that Interstate Commerce Commission orders giving precedence to Federal rates must meet a 'high standard of certainty'. Illinois Central R. Co. v. Public Utilities Commission, 245 U. S. 493, 510. Before the Commission can nullify a state rate, justification for the 'exercise of federal power must clearly appear.' Florida v. United States, 282 U. S. 194, 211-212."

Four three-judge cases, three of them of recent date and each of them affirmed on motion without opinion by the Supreme Court, touch upon the problem here to varying degrees. They are referred to in the order in which they were decided.

State of New York et al. v. United States et al., D. C. N. D. N. Y., 1951, 98 F. Supp. 855, affd. 342 U. S. 882, 72 S. Ct. 152, 96 L. Ed. 662, discussed the matter of similarity of transportation conditions, holding that whether similarity exists is a question of fact. It was stated that the term denotes a general likeness, an approximation, something less than an absolute identity. But the question of similarity was not involved in the way it is here. There was an attack on the similarity of services rendered New York and Connecticut commuters, and it was held that the findings of similarity of service was based upon evidence that appeared to be substantially undisputed. The opinion indicates that on the issue corresponding to the determinative one here, there were cost studies in evidence, and one of the principal disputes was whether the "train by train" method rather than the group method should be followed. The evidence adduced and the consideration by the Commission of the comparative cost items as indicated by the decision, make it appear that the case is not closely in point except to indicate the general type of proof that has been offered heretofore in rate cases.

In *Louisiana Public Service Commission v. United States et al.*, D. C. E. D. La., Baton Rouge D., 1954, 125 F. Supp. 180, affd. 348 U. S. 885, 75 S. Ct. 205, 99 L. Ed. 696, rehear. den. 348 U. S. 921, 75 S. Ct. 289, 99 L. Ed. 723, the question of whether the findings of the Commission were supported by substantial evidence was sum-

marily disposed of in a paragraph of the opinion. It was pointed out that the record comprised nearly one thousand pages of testimony and a great number of exhibits. The court said:

> "It is sufficient to say that the Commission had before it a large volume of substantial evidence adduced by both sides of the controversy. In reaching its conclusions it was necessary for the Commission to weigh the evidence. That was a function which pecularily addressed itself to the expertise of the Commission."

Whether the four hundred pages of testimony in the case at bar covered the same fields as the record in the Louisiana case cannot be determined from the opinion. Certainly, the opinion does not settle the point of comparability which is determinative here.

The case of *Mississippi Public Service Commission v. United States et al.*, D. C. S. D. Miss., Jackson D., 124 F. Supp. 809 (one judge dissenting), affd. 1955, 349 U. S. 908, 75 S. Ct. 584, 99 L. Ed. 1244, directly passed upon the question of the sufficiency of the evidence contrary to the contentions of the railroad company. I cannot agree with two indications in the opinion of Judge Mize, who spoke for a majority of the three-judge court: (a) that to justify the order of the Commission it must be shown both that the disparity between rates operates as a discrimination against interstate commerce *and* that it results in injury to interstate shippers; and (b) that in order to justify such an order there must be evidence distinguishing railroads' revenues, expenses and properties as between interstate and intrastate operations. On the first point, it is probable that the use of the conjunctive, with no support in the statute, 49 U. S. C. A. 13(4), was an inadvertence. On the latter proposition,

the language, to be an accurate statement of the law, would have to contain the qualification that such separate treatment would be unnecessary only if the evidence failed to indicate the subtantial similarity in both areas of all factors affecting rates within the doctrine of *Illinois*. As so interpreted, and considering the comments of Judge Mize on the evidence, or lack of it, as reasons why such comparable conditions were not established in the record, the decision is meaningful and compelling here.

In a similar case, appearing to be the latest to come before the Supreme Court, *State of North Carolina et al. v. United States et al.*, D. C. E. D. N. C., 1955, 128 F. Supp. 718, affd. 1956, 350 U. S. 805, 76 S. Ct. 45, 100 L. Ed. 46, Judge Parker held for the Court that the ultimate findings of the Commission were supported by the evidence. Among these ultimate findings was one corresponding to a finding now before us that "The conditions incident to the intrastate transportation of freight in North Carolina are not more favorable than those incident to the interstate transportation in North Carolina and in the adjoining states." It was pointed out that the Commission had held a hearing for four days at which a great volume of testimony was received. But the sufficiency of the evidence was not an issue in this case. Judge Parker points out (p. 721), "* * * there is no contention that this finding of evidentiary facts is not amply supported by the evidence in the case. It is not necessary to repeat them here; but it is sufficient to say that they fully support the ultimate findings of the Commission * * *." The opinion in the North Carolina case does suggest, however, that there was more specific and pertinent evidence of common factors affecting rates

than was before the Commission in the present case. I do not mean to discount this decision as a respected authority, but because of differences appearing in the nature of the evidence and the fact that the significant issue here was not raised in that case, I do not deem it to be controlling.

II.

It is conceded that the ultimate findings of the Commission, quoted in a footnote to Judge Pickett's opinion, support the order, since they are couched in language designed to comport with the doctrine of *Illinois* and closely follow the form of the ultimate findings approved in the *King* case. When the subsidiary findings of the Commission are looked to, however, a different picture is presented, even apart from evidentiary foundations or lack of them. Except for general references to the similarity of conditions as between intrastate and interstate commerce and certain unsupported conclusions discounting the effect of the affirmative evidence adduced on behalf of those opposing the increase, the facts set out in these subsidiary findings seem to recognize a substantial difference in conditions affecting rates. The report notes, among other things, that based on annual reports filed by four of the principal respondents with the Utah Commission, it appears that the interstate freight-service ratio (freight-service expense divided by freight-service revenue) and the intrastate density (ton-miles per mile of main-line track) are as to each respondent more favorable than correspondent systemwide figures, for 1953 as shown in the report. Such figures showing a very marked difference are set out in the report. But with reference to these, the Commission adds:

"* * * The Union Pacific and the other respondents dispute the validity of the results obtained from the

application of the formula. They assert that the reports do not reflect the actual cost of operation in Utah and therefore afford no basis for comparing operating costs. One of the principal objections to the density above shown is that they were obtained by using only the miles of main track. The density results would be substantially reduced if branch-line mileage were included. The comparisons thus made are of little significance in our determination here. A more important consideration is the positive showing made upon this record that the average unit expense of servicing Utah intrastate traffic is at least as great as that of servicing interstate traffic to and from Utah."

The evidentiary basis in the record of the statement that a positive showing was made that the average unit expense of servicing Utah intrastate traffic is at least as great as that of servicing interstate traffic to and from Utah, cannot be found in the transcript, nor can I find it referred to in the briefs of the respondents. The record seems devoid of a comparison of conditions bearing on the reasonableness of rates, except for such common factors as were held in the first North Carolina case to be insufficient in the findings to support an order. It does not seem enough for the Commission to point to evidence of admitted differences in relevant factors and to say that the differences are not as great as those opposing the increases claim, without some basis in the record upon which to premise a finding that the differences are not substantial. The fact that in arriving at density figures combination main-line and branch-line track was not considered does not seem to render the data insignificant, since the comparison was based upon main-line track nationally as well as locally. No facts appear which make the conclusion rational that the density figures would, on any theory, represent a factor having no sub-

stantial bearing on the reasonableness of the respective rates. It does not seem enough to say that the substantial effect was not as great as if both main-line and branch-line figures had been presented, or to ignore that effect because of vague "average unit expense" figures, neither qualitatively nor quantatively compared therewith.

The subsidiary findings refer to an exhibit submitted by the Utah Commission portraying various operating statistics of the Denver and Rio Grande Western in Utah and Colorado, and for the entire system. This data on its face appears clearly to support a conclusion contrary to that arrived at by the Interstate Commerce Commission. The Commission dismisses the evidence by reference to its action in *Kansas City Chamber of Commerce v. Atchison, T. & S. F. Ry. Co.*, 164 I. C. C. 302, quoting its determination there, that the method of allocating revenues and expenses to a particular state was open to so many serious objections that the results obtained were unreliable. These objections were not developed in the evidence here, and no more reliable data were presented. In a similar summary manner, the study of the Utah Commission based on carload waybill statistics for 1952 showing the Utah intrastate ton-mile revenue as compared with the revenue per ton-mile on interstate shipments originated during that year, separated as to the principal commodity groups, was dismissed as "not determinative of the issues before us", due to "marked differences in lengths of haul as between intrastate and interstate traffic."

The prevailing opinion places stress upon the evidence that there is no discrimination in the handling of intrastate and interstate freight shipments, since they are

both handled on the same trains, by the same crews, and by the same departments and it is stated that "Under such conditions, the contention of the plaintiffs has been rejected by the courts." I cannot find that any court has gone to the extent of holding that such common treatment furnishes a basis of applying intrastate rate increases in the absence of evidence showing similar conditions with reference to all factors affecting rates.

It is true that Mr. Kroll testified on behalf of the railroads that no distinction is made between the two types of traffic; that the same crews, the same clerks, and the same trains haul interstate and intrastate traffic; that traffic is intermingled as between interstate and intrastate; and that intrastate shipments and interstate shipments move under "identically the same conditions". If an intrastate case can be made on such general testimony, largely within common knowledge, a hearing should not be necessary. Yet as far as the similarity of conditions affecting costs (as distinguished from actual rates charged without reference to cost) is concerned, this seems typical of testimony on which reliance must be placed if the order is upheld.

Other evidentiary matters mentioned in the prevailing opinion as a foundation for the Commission's conclusions are believed insufficient to permit plausible inferences to that effect in view of the record as a whole. Such disparity of rates as were shown are in both directions, and it is well established that mere disparity of rates establishes no sufficient basis for such an order. The railroads' need for additional revenue in general is beside the point. That the total yearly loss to the railroads caused by the failure to grant the requested increase in Utah was estimated at $1,880,347 means that a per-

centage increase applied to an existing rate theoretically will yield increased revenue. This has no probative force in regard to the problem at hand. To the extent that the record indicates that earnings on the railroads' investments in Utah are below the national average, their more favorable position locally from a cost standpoint in respect of density of traffic and the large percentage of intrastate freight carried in gondola cars from mines may not be ignored.

That economic conditions in Utah as of 1950 have improved greatly over the preceding period seems to have no determinative effect on a Section 13 case, since it is not the ability of intrastate traffic to pay more than its fair share that is involved, but whether the intrastate rate is so low as to be an economic burden on interstate commerce. Furthermore, there seems much force to the plaintiffs' argument that Utah's present economic status, if anything, militates against the Commission's conclusion since it suggests that in past years, while Utah's traffic has been essentially agricultural and relatively unproductive of revenue, its rates have moved up as a result of increases corresponding to nation-wide increases, and that now that its economy has changed to predominantly mining and industry, the relative productivity of the traffic to the railroads would make the recent nation-wide increases fairly inapplicable intrastate. Be this as it may, and conceding that evidence of general economic conditions locally may be helpful on other phases of a rate case, they do not tend to show that all factors affecting rates are substantially the same as between interstate and intrastate commerce for the purpose of the doctrine announced in *Illinois*. The figures on percentage of return on net investment of the railroads in Utah cited in the

majority opinion follow no pattern logically adaptable to the Commission's conclusion. Thus, the latest percentage, 3.82% in 1953, is more than in 1949 and more than in 1951 but less than in 1948, 1950 and 1952. Comparative revenue figures per ton-mile, covering interstate and intrastate traffic lumped together without taking into consideration differences affirmatively shown to exist in factors affecting the respective costs, again may have a bearing on other phases of a rate case, but furnish no rational basis for concluding that all factors affecting costs are substantially the same for interstate and intrastate traffic, for they go no further than to suggest, if anything, a disparity in rates which admittedly is not enough. *North Carolina v. United States*, 325 U. S. 507, supra.

Singly or in combination these factors, when viewed in context with the whole record, are believed not to supply a rational basis for the conclusion that the conditions attendant the intrastate transportation of freight in Utah are not more favorable than those incident to interstate transportation between Utah and adjoining states.

III.

Three unwarranted assumptions would seem necessary to logically sustain the decision of the Commission. One would be that prior to the application of the 15% increase nationwide, intrastate and interstate rates in Utah were in balance with reference to the cost-revenue factor so that each furnished its fair share of the total revenue needs. If this presumption could be applied in the absence of evidence in the record to support it, or in view of the kind of evidence before us, the making of a rate case would be exceedingly simple, i. e., (a) the rates,

intrastate and interstate in Utah prior to the application of the nation-wide increase affecting interstate commerce provided in Ex Parte 175 were reasonably in balance; (b) interstate rates have been increased 15%, and thus, intrastate rates are out of line by this percentage; (c) by increasing intrastate rates 15% the two classes are restored to balance so that each furnishes its fair share of general revenue requirements.

Another presumption would have to be indulged: that between the time of the last simultaneous increase, or at least subsequent to the increase under Ex Parte 175, no new factors affecting costs have developed to throw the presumed balance out. The basis of this is furnished, if at all, by the testimony concerning the intermingling of interstate and intrastate traffic, which, as has been pointed out, is insufficient.

And there is another assumption that is required if the deficiencies are to be avoided. On the whole record it appears without dispute that there are different factors operating in progressive measure to influence intrastate rates as distinguished from rates intrastate from the standpoint of the revenue-cost ratio. The rapid development of the industrial and mining economy of Utah in relation to the nation as a whole, and its established incidents, including increasing traffic density, underscore the dissimilar conditions. No evidence to disprove this divergence nor to define, limit or measure its effect appears. The Commission in its report, however, as above pointed out, dismisses the significance of these factors and other studies directly measuring the differences, not on the basis of any opposing studies or evaluations introduced at the hearing but, for example, in one instance

by a general conclusion as to comparative unit costs finding no support in the evidence, and in another instance by referring to its determination in an entirely different case.

May it be assumed, without evidence in the record which would furnish a rational basis in and of itself, that as an agency presumably equipped or informed by experience to deal with a specialized field of knowledge, its conclusions are valid and unassailable here? If this be so, the pattern for virtually automatic application of nation-wide rate increases to intrastate commerce would be complete.

But no decision of the Supreme Court countenances any such result. *Interstate Commerce Commission v. Louisville and Nashville Railroad Company*, 227 U. S. 88, 33 S. Ct. 185, 57 L. Ed. 431, expressly rejects the contention that "expertness" may take the place of evidence. As recognized by Judge Pickett, *Universal Camera Corp. v. NLRB*, 340 U. S. 474, 71 S. Ct. 456, 95 L. Ed. 456, authorizes the Court to set aside an order when it cannot conscientiously find that the evidence supporting it is substantial, when viewed in the light that the record furnishes, including the body of evidence opposed to the agency's views. In a recent commentary on the authorities in this field appearing in Harvard Law Review, April, 1956, P. 1020, et seq., Professor Louis L. Jaffee expresses it as follows (P. 1027):

> "* * * Judicial review is designed, as has been said, to make sure that there is record evidence which provides a rational or logical basis for the finding and for the consequent presumption that the finding was in fact the product of reasoning from evidence. This must mean evidence in the case and in the con-

> text of the case. To abstract out of a case that part of the evidence which can be made to support a conclusion is to imagine an abstract case, a case that was never tried. * * *"

And he further comments (p. 1040):

> "Courts usually demand that the particular agency convince the Court that its 'putative' expertness is relevant to the finding in question and even then takes this expertness as but one factor in the agency decision which must run the gauntles of its common sense."

Chief Justice Hughes in *Consolidated Edison Co. v. NLRB*, 305 U. S. 197, 58 S. Ct. 832, 82 L. Ed. 1287, says that substantial evidence means "such relevant evidence as a reasonable man might accept as adequate to support the conclusion."

The requirements of the Interstate Commerce Act, 49 U. S. C. A. 13(4), that a "full hearing" be had, coupled with the provisions of the Administrative Procedure Act, 5 U. S. C. A. 1001, et seq., negative the idea that the Interstate Commerce Commission, without evidence of substantial similarity of all factors affecting rates, and in the face of evidence showing dissimilar conditions, can, solely on the basis of its previous experience and authority, ignore the record and come to a determination independent of it. See also *Amarillo-Borger Express, Inc., et al., v. United States*, D. C. N. D., Tex., Dallas D., 1956, 138 F. Supp. 411. The legal effect of evidence is a question of law and a finding without evidence is beyond the jurisdiction of the Commission. Where the party affected is entitled to a hearing, the Interstate Commerce Commission cannot base an order establishing a rate on the information it has gathered for general purposes; the order must be based on evidence produced in the par-

ticular proceeding. *Interstate Commerce Commission v. Louisville and Nashville Railroad Company,* supra.

In reading the transcript before the Interstate Commerce Commission one may detect impatience on the part of some of the witnesses exposing the increase at any suggestion that they were called upon to produce a quantum of proof going to anything beyond an intimate connection between interstate and intrastate traffic in Utah and the difference in rates without the application of the 15% increase to intrastate traffic. In the argument before this Court the thesis was pursued that on the basis of common knowledge as to conditions in every state in the Union it could be said that all factors influencing rates were the same, and it was intimated that without evidence these matters of common knowledge would themselves justify the application of similar increases to the two classes of traffic. I fear that this is where the order of the Interstate Commerce Commission is leading us; that, henceforth, if such orders be approved now that the problem has been squarely raised (as it does not appear to have been before) there will be no use for hearings before either the state commissions or the Interstate Commerce Commission with regard to intrastate rates, except as a mere formality in approval of nation-wide increases.

What is substantial evidence is a matter on which there can be understandable differences of opinion for at best this is not a precisely measurable quantity or quality of evidence. However, it is the duty of each member of the court to determine whether minimum jurisdictional requirements have been met. I do not believe that they have been here, and with due regard for the considered majority view to the contrary, there can be no question at

least but that the issue is worthy of focused consideration. The amount of money involved is considerable. It is vital that the railroads' rates, both intrastate and interstate, be adequate, and that the former should bear its full share of general revenue needs, but the relationship between state and federal governments is also important and delicate; and it is important that no rules be laid down which will impair that relationship contrary to the principles which Congress in the light of court decisions has laid down. To thus regard it will place no roadblock in the path of the railroads in obtaining adequate rates intrastate. It will establish some signals which I believe should be observed for the protection of our entire system. It neither compromises nor weakens legitimate federal power in the field of commerce to expect that the basis for the exercise of that power be shown affirmatively by substantial evidence. Such insistence may appear to be a protection solely to the public one day, to the state on another, or to the railroads on yet another; but the by-passing of such requirement can, in the long run, injure all and may, through reaction, impair the power itself.

I would vacate the order of the Interstate Commerce Commission and enjoin the application of the increased intrastate rates until, if at all, substantial evidence is presented before the Interstate Commerce Commission furnishing a rational basis for the conclusion that conditions under which intrastate and interstate traffic move in Utah are substantially the same with respect to all factors bearing on the reasonableness of the rates.

Dated this 23rd day of May, 1956.

/s/ A. SHERMAN CHRISTENSON,
United States District Judge.

Filed in United States District Court, District of Utah
June 18, 1956
O. K. Clay, Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

CIVIL ACTION NO. C-8-56

PUBLIC SERVICE COMMISSION OF UTAH and UTAH CITIZENS RATE ASSOCIATION,

Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,

Defendants;

and

UNION PACIFIC RAILROAD COMPANY, THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, SOUTHERN PACIFIC COMPANY, THE WESTERN PACIFIC RAILROAD COMPANY, BAMBERGER RAILROAD COMPANY, THE OGDEN UNION RAILWAY AND DEPOT COMPANY, SALT LAKE-GARFIELD AND WESTERN RAILROAD COMPANY, TOOELE VALLEY RAILWAY COMPANY, and UTAH RAILWAY COMPANY,

Intervenors.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled matter came on regularly for hearing on April 9, 1956, before a statutory three-judge court consisting of Hon. John C. Pickett, Judge of the United

States Court of Appeals for the Tenth Circuit, and the Hon. Willis W. Ritter and Hon. A. Sherman Christenson, District Judges of the United States District Court for the District of Utah; the plaintiffs being represented by Raymond W. Gee, Assistant Attorney General of the State of Utah, Calvin L. Rampton and Keith E. Sohn; the defendants being represented by A. Pratt Kesler, United States Attorney for the District of Utah, and C. H. Johns, Attorney for the Interstate Commerce Commission; and the intervening railroads being represented by W. H. Fitzpatrick and A. U. Miner; and the Court having received in evidence and considered the record of evidence submitted to and produced before the Interstate Commerce Commission, and having heard the arguments of counsel and considered their respective briefs submitted in connection therewith, and being fully advised in the matter, now make the following:

FINDINGS OF FACT

1. The plaintiff Public Service Commission of Utah is a statutory commission created by and existing under the laws of the State of Utah, and is vested with power and authority over intrastate freight rates of common carrier railroads within the State of Utah, except as such rates may cast an undue burden upon or discriminate against interstate commerce, and except as such rates may therefore be regulated and controlled by the Interstate Commerce Commission under Section 13 of the Interstat Commerce Act, pursuant to which act the orders involved herein were issued by the Interstate Commerce Commission; the plaintiff Utah Citizens Rate Association is a non-profit corporation organized under the laws of the State of Utah, having as its members various shippers of railroad freight within and from the State of Utah.

2. That during the year 1951 in a proceeding designated as "Ex Parte 175", wherein Class I Railroads of the United States sought an overall increase in interstate freight rates, the Interstate Commerce Commission undertook an investigation with respect to the level of such interstate freight rates, and after extended hearings and interim percentage increases, said commission on April 11, 1952, granted to all of said railroads increases totalling 15 per cent on interstate freight rates, such increases being subject to certain exceptions and hold-downs.

3. Railroads operating in the State of Utah made application to the Public Service Commission of Utah requesting increases in intrastate freight rates comparable to and in the same percentage amounts as had been granted by the Interstate Commerce Commission on interstate rates in "Ex. Parte 175." After hearing thereon, the Utah Commission refused to grant the requested intrastate increases, one of the main bases of the Utah Commission's refusal being that the railroads had made no separation between their interstate and intrastate costs and expenses, the railroads contending that such items of expense were so inextricably bound together as to be impractical, if not impossible, of separation.

4. Section 13 proceedings were instituted by the railroads before the Interstate Commerce Commission; and pursuant thereto, the Interstate Commerce Commission, under its Docket No. 31484, entered into an investigation of Utah intrastate freight rates and charges. Commencing on May 20, 1954, a full and complete hearing was had before an Interstate Commerce Commission examiner, at which hearing a great amount of evidence, both oral and documentary, was introduced both

by the railroads and by protestants who appeared, including the plaintiffs herein. After hearing and considering the same, the said examiner on March 11, 1955, issued a report and order in which he recommended to the Interstate Commerce Commission that it issue its order requiring that freight rates intrastate in Utah be raised as requested, with a few minor exceptions. The plaintiffs herein thereupon filed with the Interstate Commerce Commission their exceptions to the report and order as proposed by the examiner. Pursuant to request of the parties, oral arguments, with respect to said proposed order and said exceptions taken thereto, were heard before the Interstate Commerce Commssion on July 11, 1955.

5. Under date of October 17, 1955, the Interstate Commerce Commission issued its report and order in said matter, wherein it found, with certain exceptions, that the Utah intrastate rates and charges were abnormally low; that conditions incident to intrastate transportation in Utah were not more favorable than those incident to interstate transportation in said state; that traffic thereunder failed to produce its fair share of earnings required to yield the railroads sufficient revenue to provide adequate and efficient railway transportation service to accomplish the purposes of the Interstate Commerce Act, and that Utah intrastate rates cast an undue burden upon interstate commerce. The Interstate Commerce Commission also found and ordered and directed that the undue burden and unjust discrimination should be removed by applying to the Utah intrastate rates and charges on like intrastate traffic the percentage increases authorized on interstate traffic in Ex Parte 175, with the proviso "that increases may not be made in intrastate rates to levels higher than the inter-

state rates on like traffic to or from Utah for like or greater short line distances over the same lines of railroad, except in instances where the interstate rates, and not the intrastate rates, are designated as published to meet motor carrier competition."

6. Said order of the Interstate Commerce Commission further provided that the Utah Commission would be allowed thirty days to put said increases into effect; and unless the Utah Commission notified the Interstate Commerce Commission within the thirty days that it would authorize and permit such increases, that a further order would be issued by the Interstate Commerce Commission, putting said rates into effect.

7. Petition for rehearing was filed by plaintiffs and denied by the Interstate Commerce Commission.

8. The Utah Commission did not authorize the increases within the time provided in said order, nor within an authorized extension of said time; and under date of February 8, 1956, the Interstate Commerce Commission issued its further order, wherein the railroads were directed by said Interstate Commerce Commission to put increased rates in effect in Utah pursuant to its order of October 17, 1955, and to publish and file its tariffs, and by such tariff issuance to make the 15 per cent increase effective on Utah intrastate freight rates as of March 13, 1956, upon one day's notice to the public and the Interstate Commerce Commission.

9. The present suit was brought by Public Service Commission of Utah and Utah Citizens Rate Association against United States of America and Interstate Commerce Commission under the provisions of Title 49, U. S. C. A., Section 17(9) and Title 28, U. S. C. A., Sections

1336, 1398, 2284, 2321, 2322, 2323, 2324 and 2325 and pursuant to Title 5, U. S. C. A., Section 1009, to enjoin, annul and set aside the report of the Interstate Commerce Commission dated October 17, 1955, and the order of the Interstate Commerce Commission dated February 8, 1956. The railroads operating in the State of Utah, who had been named as parties respondent in the Commission's proceedings in Docket No. 31484, intervened in the defense of the report and orders.

10. On March 9, 1956, the United States District Court for the District of Utah, both the Hon. Willis W. Ritter and the Hon. A. Sherman Christenson concurring therein, issued a temporary restraining order restraining the Interstate Commerce Commission and the intervening railroads from putting such increased rates into effect intrastate within the State of Utah pending hearing upon the merits before a full three-judge court. Prior to commencing trial on the merits on April 9, 1956, it was stipulated by all parties that such restraining order might remain in effect as an interlocutory injunction pending hearing and decision upon the merits, and it was so ordered by this Court.

11. A three-judge court was convened pursuant to statutory provisions (Title 28, Sections 2284 and 2325). The record upon which the Commission's report and orders of October 17, 1955, and February 8, 1956, are based, was introduced in evidence and considered by the court in reaching its decision.

12. At the opening of the trial the plaintiffs offered to introduce in evidence the record of proceedings made before the Public Service Commission of Utah in the

hearing held by it upon the railroad's request to increase intrastate freight rates, prior to the 13th Section hearing before the Interstate Commerce Commission. Defendants and intervenors objected to the introduction of such record as made before the Utah Commission, because no part thereof had been introduced in any of the proceedings had before the Interstate Commerce Commission in said 13th Section hearing. The Court reserved ruling upon the admissibility of the latter record, and the Court now finds from the record as introduced before the Interstate Commerce Commission that no part of such proceedings before the Utah Commission were introduced or offered in evidence in the proceedings before the Interstate Commerce Commission, and the Court therefore finds that said record as made before the Utah Commission is irrelevant and not proper to be considered herein; and this Court in arriving at its conclusions herein has not considered the same.

13. The plaintiffs made no claim that the findings of the Interstate Commerce Commission did not support the conclusions of, and the orders as issued by the Interstate Commerce Commission. The plaintiffs asserted that the findings of the Interstate Commerce Commission were not supported by substantial evidence.

14. In finding that existing Utah intrastate rates cast an undue burden upon and discriminated against interstate commerce, the Interstate Commerce Commission did not rely entirely upon the disparity in rates. The evidence in the record shows that there is no distinction in the handling of interstate and intrastate freight shipments. They are both handled on the same trains and by the same crews; the same accounting department, the same traffic department and the same facilities are used in

the dispatch and receipt of both shipments. The railroads' general need for additional revenue was established in Ex Parte 175. The evidence produced before the Interstate Commerce Commission in this case was that the earnings on investments of Utah railroads are below the national average. The economic ability of Utah traffic to bear the 15 per cent increase found necessary in Ex Parte 175, was shown. The economic conditions in Utah in 1950 had improved greatly over the preceding period, both actually and relatively. Wages were higher than the national average; higher wages and costs of operation which the railroads had to pay in Utah and elsewhere, were shown; there had been a substantial increase in property investments of railroads operating within the state, while there was a decrease in net operating income. The cost of handling an intrastate shipment was shown to be as great, if not greater, than the handling of interstate freight. The record shows that in 1952 the revenue per ton mile of railroads in the United States was 1.43c; in the Western District, 1.393c; and in the Mountain Pacific States, which includes Utah, 1.398c per ton mile; and in the State of Utah, on intrastate and interstate traffic, 1.258c per ton mile. The total annual loss to the railroads caused by the failure to grant the requested increase in Utah was estimated by both plaintiffs and defendants, including the intervening railroads, to be approximately $1,880,347.

15. The report and findings of the Interstate Commerce Commission herein (297 I. C. C. 87) is hereby adopted by reference and made a part of these findings of fact. The findings in that report and the orders entered thereunder are entirely proper and within the scope of the statutory authority of the Commission, and such findings of the Interstate Commerce Commission are adequately supported by substantial evidence.

16. Plaintiffs' contention that the order relating to the Utah intrastate rates is invalid because the flat percentage increase of 15 per cent in Ex Parte 175, with a saving clause, was contrary to law, is without merit and amounts to a collateral attack upon such Ex Parte 175 proceedings.

17. There is no basis in fact which would justify the granting of an injunction as prayed for.

From the foregoing findings of fact the Court make the following:

CONCLUSIONS OF LAW

1. This Court has jurisdiction to determine the lawfulness of the report and orders of the Interstate Commerce Commission here involved.

2. The Interstate Commerce Commission, in making such findings and report and orders as based thereon, was acting within the authority granted to it by the Congress of the United States in the Interstate Commerce Act as amended, and the orders of the Commission are not beyond its statutory powers in any respect, are not arbitrary and are not based on findings or conclusions which are erroneous in any respect.

3. The validity of the Commission's order in Ex Parte 175 is not subject to a collateral attack herein.

4. The costs and expenses incident to the handling of intrastate and interstate traffic are intimately, if not inextricably, bound together; and it is not necessary that a separation be made between such costs and expenses as to interstate and intrastate traffic for the purposes of the Commission's investigation and the orders as entered by it herein.

5. The Commission's findings are adequate to support its order.

6. The findings, report and orders of the Interstate Commerce Commission are supported by substantial and probative evidence.

7. The Commission's report and order of October 17, 1955, and its orders dated January 9, 1956, and February 8, 1956, are valid in all respects.

8. The interlocutory injunction as granted upon stipulation of the parties on April 9, 1956, should be dissolved.

9. The complaint of plaintiffs should be dismissed with prejudice and at plaintiffs' costs.

Dated this 13 day of June 1956.

JOHN C. PICKETT,
Circuit Judge

WILLIS W. RITTER
District Judge

Received copy of foregoing Findings of Fact and Conclusions of Law this 12 day of June 1956.

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Filed in United States District Court, District of Utah
June 18, 1956
O. K. Clay, Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

CIVIL ACTION NO. C-8-56

PUBLIC SERVICE COMMISSION OF UTAH and UTAH CITIZENS RATE ASSOCIATION,

Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,

Defendants;

and

UNION PACIFIC RAILROAD COMPANY, THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, SOUTHERN PACIFIC COMPANY, THE WESTERN PACIFIC RAILROAD COMPANY, BAMBERGER RAILROAD COMPANY, THE OGDEN UNION RAILWAY AND DEPOT COMPANY, SALT LAKE GARFIELD AND WESTERN RAILROAD COMPANY, TOOELE VALLEY RAILWAY COMPANY, and UTAH RAILWAY COMPANY,

Intervenors.

FINAL DECREE

This cause came on regularly for hearing on April 9, 1956, before the Hon. John C. Pickett, Judge of the

United States Court of Appeals for the Tenth Circuit, and the Hon. Willis W. Ritter and the Hon. A. Sherman Christenson, District Judges of the United States District Court for the District of Utah, who constituted a special statutory three-judge court which was convened pursuant to the provisions of Title 28, U. S. C. A., Section 2325, upon a complaint brought by plaintiffs above named, to enjoin, annul and set aside a decision, report and orders of the Interstate Commerce Commission in a proceeding entitled "Utah Intrastate Freight Rates and Charges, Docket No. 31484" (297 I. C. C. 87); the matter was heard upon the evidence taken before the Interstate Commerce Commission and the report and orders of the Interstate Commerce Commission, as well as upon arguments and briefs of counsel for all parties; and the cause having been submitted for final decree, and the Court having made its findings of fact and conclusions of law, which are filed herewith,

NOW, THEREFORE, upon the basis of said findings of fact and conclusions of law, and for the reasons set forth by the majority opinion of the Court heretofore filed, it is, upon motion of counsel for the defendants and counsel for the intervening railroads,

ORDERED, ADJUDGED AND DECREED that the interlocutory injunction heretofore entered and granted in the above-entitled cause on April 9, 1956, be, and the same is set aside and dissolved. The request of plaintiffs for a permanent injunction and order annulling and setting aside the orders of the Interstate Commerce Commission is denied, and the plaintiffs' complaint is hereby dismissed with prejudice and with costs to be assessed against the plaintiffs.

Dated this 13 day of June 1956.

JOHN C. PICKETT
Circuit Judge

WILLIS W. RITTER
District Judge

Received copy of foregoing Final Decree this 12 day of June 1956.

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By RAYMOND W. GEE
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No. ~~362~~ 15

In the Supreme Court of the United States

OCTOBER TERM, 1956

PUBLIC SERVICE COMMISSION OF UTAH AND UTAH CITIZENS RATE ASSOCIATION, APPELLANTS

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH.

MOTION TO AFFIRM

J. LEE RANKIN,
Solicitor General,
VICTOR R. HANSEN,
Assistant Attorney General,
FREDERICA S. BRENNEMAN,
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Washington 25, D. C.

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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 362

PUBLIC SERVICE COMMISSION OF UTAH AND UTAH CITIZENS RATE ASSOCIATION, APPELLANTS

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

MOTION TO AFFIRM

Pursuant to Rule 16, paragraph 1(c), of the Revised Rules of this Court, appellees United States of America and Interstate Commerce Commission move that the judgment of the district court be affirmed.

STATEMENT

This is a direct appeal from a final judgment entered June 13, 1956, by a three-judge district court convened pursuant to 28 U.S.C. 2284, 2325, dismissing an action to set aside an order of the Interstate Commerce Commission. That order required appellee rail carriers

to increase their intrastate freight rates in Utah to the level of interstate rates.

Following the nation-wide increase in interstate freight rates ordered by the Commission in *Ex Parte 175* (*Increased Freight Rates, 1951*, 284 I.C.C. 589), the railroads operating in Utah petitioned the Public Service Commission of Utah for comparable increases in intrastate freight rates. The Utah Commission dismissed their petition for failure to produce the kind of evidence as to their intrastate operations which Utah law requires. The carriers then petitioned the Interstate Commerce Commission to increase the intrastate rates to the interstate levels. After full administrative proceedings, the Commission determined that intrastate rates unjustly discriminated against interstate commerce, and authorized the increases (with minor exceptions). *Utah Intrastate Freight Rates and Charges*, 297 I.C.C. 87.

On review, the three-judge district court (one judge dissenting) sustained the order. Noting that the adequacy of the findings had not been challenged, the court nonetheless considered the "voluminous record," and it concluded that the findings were supported by substantial evidence.

ARGUMENT

Section 13(4) of the Interstate Commerce Act authorizes the Commission to prescribe new intrastate rates where it finds that existing intrastate rates either unjustly discriminate against, or cause undue preference or prejudice against persons or localities in, interstate commerce. In *King* v. *United States*, 344 U. S. 254, the Court held (pp. 270-271) that a Commission

order, which increased Florida intrastate rates to the interstate rate level in order to remove unjust discrimination against interstate commerce, was adequately supported by findings (1) that intrastate rates were abnormally low and were not contributing their fair share to the carriers' revenues; (2) that transportation conditions incident to the intrastate transportation of freight in Florida were not more favorable than those incident to interstate movement; (3) that the increased intrastate rates would not exceed a just and reasonable level; and (4) that the increased intrastate rates would substantially increase the carriers' revenues and would not contribute more than a fair proportion to their total income. In the instant case, the Commission made similar findings,[1] and there is no challenge to their adequacy to support the order.

Appellants' principal contention is that there is inadequate evidentiary support for the finding that conditions incident to intrastate freight transportation are no more favorable than those incident to interstate movement. Experienced railroad personnel testified without contradiction that intrastate traffic in Utah and interstate traffic moving to or through points in Utah are handled in the same manner by the same

[1] The Commission found (297 I.C.C. at 105-106), *inter alia*, that conditions incident to intrastate freight transportation in Utah were not more favorable than those incident to interstate transportation between Utah and adjoining States; that present interstate rates are just and reasonable; that Utah intrastate rates (with minor exceptions) were abnormally low, failed to produce a fair share of required earnings, and cast an undue burden upon interstate commerce which would be removed by applying the same increases received by interstate rates; and that the higher intrastate rates will not be unreasonable and will substantially increase the carriers' revenues.

crews in the same trains utilizing the same yard facilities, and that no distinction is made in the handling, loading or unloading of the two types of freight. The court below, after considering this evidence, concluded that it adequately supported the Commission's finding as to similarity of transportation conditions; and that this finding, coupled with data as to economic conditions in Utah,[2] in turn supported the Commission's conclusion that "[t]he cost of handling an intrastate shipment [is] . . . as great, if not greater, than the handling of interstate freight." (Jurisdictional Statement, p. 60; see 297 I.C.C. at 103.)

Similar evidence has many times been held to support the finding that transportation conditions are no more favorable on intrastate traffic than on interstate traffic. See, *e.g., New York* v. *United States*, 98 F. Supp. 855 (N.D.N.Y.), affirmed, 342 U. S. 882; *South Carolina* v. *United States*, 136 F. Supp. 897 (E.D.S.C.), affirmed, 351 U.S. 944. Appellants assert, however, that such evidence is insufficient in this case because of statistics purporting to show that traffic density (ton-miles carried per mile of track) on intrastate traffic is heavier than on interstate traffic. (Jurisdictional Statement, p. 9.) The Commission carefully considered these data (297 I.C.C. at 103), but found them unpersuasive because the density figures had been based solely upon main-line track mileage, and ignored the

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[2] "Wages were higher than the national average; higher wages and costs of operation which the railroads had to pay in Utah and elsewhere, were shown; there had been a substantial increase in property investments of railroads operating within the state, while there was a decrease in net operating income." (Jurisdictional Statement, 59-60).

branch-line mileage of the railroads. Since the record shows, as the Commission found (297 I.C.C. 91), that 80% of intrastate carload traffic consists of mine products which, the record shows, originate on branch lines, the Commission's conclusion that "[t]he density results would be substantially reduced if branch-line mileage were included" and hence that "[t]he comparisons thus made are of little significance," is a reasonable one.

Appellants apparently contend that the language of this Court in *Illinois Commerce Commission* v. *United States*, 292 U. S. 474,[3] requires the Commission to find that *all* aspects of interstate and intrastate traffic are identical—not merely that conditions incident to the transportation of such traffic are subsantially similar[4] —before it may issue an order under Section 13(4) removing discrimination against interstate commerce. Under such a theory, a difference in density would preclude issuance of a Section 13(4) order. But we submit that the *Illinois* decision imposes no such rigid formula upon the Commission. Otherwise, the Commission would be required to develop a *rate* case for each particular category of intrastate traffic covered by a gen-

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[3] "Where the conditions under which interstate and intrastate traffic move are found to be substantially the same with respect to all factors bearing on the reasonableness of the rate, and the two classes are shown to be intimately bound together, there is no occasion to deal with the reasonableness of the intrastate rates more specifically, or to separate intrastate and interstate costs and revenues." 292 U.S. at 483-484.

[4] But see 292 U.S. at 485: "The effect of maintaining a lower rate, intrastate, than the reasonable interstate rate is necessarily discriminatory wherever the two classes of traffic, inextricably intermingled, are carried on, as in the District, under substantially the same conditions."

eral increase in intrastate rates which is designed to relieve a burden on interstate *revenues*. This Court has made it clear, however, that "[i]t is not necessary, for general revenue purposes, to establish for each item in each freight rate a fully developed rate case." *King v. United States*, 344 U. S. 254, 275. We submit that the court below correctly held that the Commission's finding as to similarity of transportation conditions of interstate and intrastate traffic is supported by substantial evidence on the whole record.

Appellants' other contentions (Jurisdictional Statement, 11-13) also relate to the sufficiency of the evidence. Each of these was fully presented to, and rejected by, both the Commission and the court below, and there is no occasion for further review of these evidentiary questions by this Court.

As this Court has indicated, the initial reviewing court has "primary responsibility" (*National Labor Relations Board v. Pittsburgh Steamship Co.*, 340 U. S. 498, 502) for deciding "[w]hether on the record as a whole there is substantial evidence to support agency findings." The Jurisdictional Statement reveals nothing to make this case that "rare instance" where the reviewing court "misapprehended or grossly misapplied" the governing criteria (*Universal Camera Corp. v. National Labor Relations Board*, 340 U. S. 474, 491), nor any other special circumstance which might warrant a second reanvassing of this record. See *New England Divisions Case*, 261 U. S. 184, 203, 204; *Radio Corp. v. United States*, 341 U. S. 412, 415. The bare presence in the record of evidence upon which a different trier of fact might have reached a contrary conclusion does not warrant the overturning of the Commission's order. See *United States v. Detroit Naviga-*

tion Co., 326 U. S. 236, 241; *United States v. Pierce Auto Freight Lines*, 327 U. S. 515, 536.

CONCLUSION

For the foregoing reasons, we submit that the decision below is correct and that this appeal presents no substantial question. The judgment of the district court should accordingly be affirmed.

Respectfully submitted.

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SEPTEMBER 1956.

---

[5] Appellants also list as a question presented whether a collateral attack may be made in this action on the Commission's earlier *Ex Parte 175* order. They do not, however, argue the point. In any case, as the court below correctly held (Jurisdictional Statement, 30a), "[t]he validity of the Commission's order in *Ex Parte 175* is not subject to collateral attack." See *Callaghan Road Co. v. United States*, 345 U.S. 507, 512; *Securities & Exchange Commission v. Central-Illinois Securities Corp.*, 338 U.S. 96, 143.

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No. 15

In the Supreme Court of the United States

OCTOBER TERM, 1957

Public Service Commission of Utah and Utah Citizens Rate Association,

Appellants,

v.

United States of America and Interstate Commerce Commission,
The Denver and Rio Grande Western Railroad Company,
Union Pacific Railroad Company,
Southern Pacific Company,
The Western Pacific Railroad Company,
Utah Railway Company,
Bamberger Railroad Company,
Tooele Valley Railway Company,
Salt Lake, Garfield and Western Railway Company,
The Ogden Union Railway and Depot Company,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

BRIEF OF RAILROAD APPELLEES

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Appendix B—Cases in which the Commission authorized interstate rate increases and the companion cases in which the Commission felt compelled to exert its authority over Utah intrastate rates.

No. 15

In the Supreme Court of the United States

OCTOBER TERM, 1957

Public Service Commission of Utah and Utah Citizens Rate Association,

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United States of America and Interstate Commerce Commission,
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The Western Pacific Railroad Company,
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Bamberger Railroad Company,
Tooele Valley Railway Company,
Salt Lake, Garfield and Western Railway Company,
The Ogden Union Railway and Depot Company,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

BRIEF OF RAILROAD APPELLEES

OPINIONS BELOW

The majority opinion and dissenting opinion of the three-judge United States District Court for the District of Utah (R. 39-65) are reported in 146 F. Supp. 803. The court's findings of fact and conclusions of law are in the Record at pages 65-72. The report of the Interstate Commerce Commission (R. 94-120) appears in 297 I. C. C. 87.

JURISDICTION

This action was brought by the above-named appellants pursuant to 28 U. S. Code 1336, 1398, 2284 and 2321-2325, to enjoin, annul and set aside the order issued February 8, 1956 (R. 130), by the Interstate Commerce Commission in a proceeding entitled "No. 31484, Utah Intrastate Freight Rates and Charges." That order increased certain intrastate rates on freight moved by the railroad appellees within the State of Utah. Petition for reconsideration was denied by the Commission January 9, 1956.

Final judgment and decree (dated June 13, 1956) of the district court sustaining the validity of the order and dismissing the complaint was entered June 18, 1956 (R. 73-75). Jurisdiction of this Court is conferred by 28 U. S. Code 1253, 2101(b) and 2325. Probable jurisdiction was noted on November 5, 1956, 77 S. Ct. 128.

STATUTE INVOLVED

The National Transportation Policy and pertinent provisions of Sections 13 and 15a of the Interstate Commerce Act, Part I, 49 U. S. C., are set out verbatim in Appendix A hereto.

QUESTIONS PRESENTED

The questions presented, as stated in appellants' Jurisdictional Statement, page 3, are as follows:

"(1) Were the findings of the Interstate Commerce Commission challenged in the above entitled case supported by substantial evidence?

"(2) May the court sustain the Interstate Commerce Commission's Order, without further evidence on the following:

(a) The presumption that interstate and intrastate rates were in proper relationship prior to the increase;

(b) The matter of common knowledge that intrastate and interstate traffic are intermingled on the same trains.

"(3) May the Interstate Commerce Commission and the Court ignore the evidence of the protestants which detracts from the evidence of the railroads.

"(4) May a collateral attack be made in this action upon the Interstate Commerce Commission Order in Ex Parte No. 175."

It is observed that either an affirmative or a negative answer to question "(1)" will necessarily dispose of and render entirely superfluous question "(2)(a)" and "(b)."

It is noted also that the word "collateral" has been eliminated from question "(4)" as restated in appellants' brief, page 5. At page 37 of their brief appellants insist they are entitled in this case to attack the "legality" of the Interstate Commerce Commission's order in Ex Parte No. 175, while denying at page 36 that this is a "collateral attack" on that order.

STATEMENT

This is a direct appeal by the Public Service Commission of Utah (hereinafter called "Utah commission") and Utah Citizens Rate Association (hereinafter called "Rate Association"), from a decision and final decree (one judge dissenting) of a three-judge United States District Court for the District of Utah, sustaining the validity of the order issued by the Interstate Commerce Commission (hereinafter called "Commission") Feb-

rnary 8, 1956, under Section 13(4) of the Interstate Commerce Act, in a proceeding entitled "No. 31484, Utah Intrastate Freight Rates and Charges." The order (R. 130) directed the railroads operating in Utah to increase by 15 percent their intrastate freight rates on commodities, with certain exceptions, moved by them within Utah.

PROCEEDING BEFORE THE COMMISSION

The circumstances which led to the issuance of the order are stated as follows in the Commission's report of October 17, 1955, upon which the order is based (R. 95-97):

> "Exceptions to the report proposed by the examiner were filed by the Public Service Commission of Utah, the Utah Citizens Rate Association, the Utah Coal Operators Association, and the Ideal Cement Company, and the respondents replied. The parties were heard in oral argument Exceptions and requested findings not discussed in this report nor reflected in our findings or conclusions have been considered and found not justified.
>
> "This proceeding is an investigation under section 13 of the Interstate Commerce Act into the lawfulness of Utah intrastate freight rates and charges. Responsive to a petition filed by the principal railroads serving Utah, we entered upon this investigation for the purpose of determining whether the rates and charges of the common carriers by railroad operating in Utah, or any of them, for the intrastate transportation of property, made or imposed by authority of the State of Utah, cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate or foreign commerce, on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, and, if so, what rates and charges, or what

maximum or minimum, or maximum and minimum, rates and charges shall be prescribed to remove any unlawfulness found to exist.

"All common carriers by railroad operating in Utah which are subject to the Commission's jurisdiction were made respondents. Copies of the order of investigation and notice of hearing were served upon each of them and upon the State of Utah.

"In *Increased Freight Rates, 1951,* 280 I. C. C. 179, decided March 12, 1951, hereinafter referred to as Ex Parte No. 175, we authorized interim general increases, among others, of 2 percent in all basic interstate rates and charges, with a few exceptions, in western territory within which the State of Utah is located, subject to maximum increases on certain commodities. Such increase became effective generally on April 4, 1951, on interstate traffic. In the second Ex Parte No. 175 proceeding, 281 I. C. C. 557, decided August 2, 1951, the respondents were authorized to increase such interstate rates and charges 6 percent in lieu of the amount previously authorized, such increase to be applied as a surcharge to the amount of the total freight charge shown on the freight bill. This increase became effective generally on August 28, 1951, on interstate traffic, and was subject to an expiration date of February 28, 1953. In the third Ex Parte No. 175 proceeding, 284 I. C. C. 589, decided April 11, 1952, the surcharge previously authorized was increased to 15 percent, subject also to certain exceptions in which lesser percentages were authorized on certain commodities, and subject also to certain maximum increases, with an expiration date of February 28, 1954. The expiration date has been extended to December 31, 1955, by order entered July 29, 1953, 289 I. C. C. 395. The latter increases became effective generally on interstate traffic on May 2, 1952.

"By petitions filed in June, 1951, November, 1952, and September, 1953, the respondents requested

the Utah Commission to authorize increases in the intrastate rates and charges corresponding to those authorized in the three Ex Parte No. 175 proceedings. Hearings were held on these petitions in October, 1951 and November and December, 1953. By order of December 14, 1953, the Utah commission dismissed the petitions on the ground that the railroads had failed to produce evidence concerning their intrastate operations as required by Utah law. None of the increases authorized in the various Ex Parte No. 175 proceedings has been made applicable on intrastate traffic. The respondents now seek to make the final Ex Parte No. 175 increases (15 percent, subject to the stated exceptions and maxima) in all intrastate rates and charges, except those applying on sugar beets and beet-sugar final molasses moving to sugar factories."

After a thorough and detailed review of the evidence submitted by the railroads, the appellants and other parties, the Commission's report sets forth the following (R. 117-120)—

"*Discussion and conclusions.*—This proceeding presents two main questions for determination. First, do the present intrastate rates and charges cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate commerce, on the other hand; and second, do the present intrastate rates and charges cause any undue, unreasonable, or unjust discrimination against interstate commerce? In considering the first question, it should be noted that this provision of section 13(4) of the act is primarily for the protection of persons and localities and not for the benefit of the carriers. Only one interstate shipper of cement presented evidence purporting to show undue and unreasonable advantage and prejudice between persons and localities. That evidence is not sufficient to support the statewide finding requested.

"There remains the question of unlawful discrimination against interstate commerce. As noted, the respondents estimate that their annual revenues will be increased by approximately $1,880,000 if the Ex Parte No. 175 increases are added to the present intrastate rates. About 80 percent of that amount, it is estimated, would come from the intrastate movement of products of mines. This would leave some 20 percent, or $376,000, to be borne by other commodities.

"The record is convincing that the transportation conditions affecting Utah intrastate traffic differ in no material respect from those affecting interstate traffic to and from that State, and that Utah intrastate traffic is no less able to bear the full increase sought than the interstate traffic. The Ex Parte No. 175 increases were authorized for interstate rail traffic throughout the country based upon the total revenue needs of the railroads generally, and have been made effective on interstate traffic generally as well as on intrastate traffic with most of the States. The railroads' need for additional revenue to meet increased operating expenses was the underlying basis for our decision in that proceeding. Those increased operating costs were not confined to interstate traffic, but were and are incurred also on Utah intrastate traffic.

"We conclude that—

"1. The conditions incident to the intrastate transportation of freight in Utah are not more favorable than those incident to the interstate transportation between Utah and adjoining States.

"2. The amounts and percentages by which interstate freight rates and charges between points in Utah and points in other States were increased, as authorized in Ex Parte No. 175, are just and reasonable.

"3. The present Utah intrastate rates and charges on carload and less-than-carload freight, except on sugar beets and beet-sugar final molasses destined to sugar factories, and excepting certain rates on coal, sheep, and cattle, hereinafter enumerated imposed by authority of the State, are abnormally low, and traffic thereunder fails to produce its fair share of the earnings required to yield revenue sufficient to enable the respondents, under honest, economic, and efficient management, to provide adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service, and thereby accomplish the purposes of the Interstate Commerce Act as set forth in the national transportation policy declared by the Congress to develop and preserve a national transportation system adequate to meet the needs of the commerce of the United States, of the postal service, and of the National Defense. The burden thus cast upon interstate commerce is undue in and to the extent that these intrastate rates and charges are less than they would be on the bases herein prescribed; and these intrastate rates and charges cause, and for the future will cause, undue, unreasonable, and unjust discrimination against interstate commerce.

"4. The undue, unreasonable, and unjust discrimination herein found to exist should be removed by applying to the Utah intrastate rates and charges, on the commodities and traffic herein described, the same respective increases as are and for the future may be maintained by the respondents on like interstate traffic between points in Utah and adjoining States under our authorization in Ex Parte No. 175, provided that increases may not be made in intrastate rates to levels higher than the interstate rates on like traffic to or from Utah for like or greater short-line distances over the same lines of railroad, except in instances where the interstate rates, and

not the intrastate rates, are designated as published to meet motor-carrier competition.

"5. The establishment of increases in intrastate rates and charges as prescribed in finding 4 will not result in unreasonable rates, or rates that are unreasonable in relation to interstate rates, and will substantially increase the respondents' annual revenues.

"6. The increased revenues to the respondents which will result from the increased rates and charges as provided in finding 4 are required from intrastate traffic in Utah in order to enable the respondents to provide adequate and efficient railway transportation service.

"7. In certain instances it appears that the present Utah intrastate rates are now as high as corresponding interstate rates including the Ex Parte No. 175 increases for comparable distances. The intrastate rates specified below, are excepted from the findings herein:

"Rates on sugar beets or beet-sugar final molasses destined to sugar factories.

"Rates on coal, viz:

From Castle Gate to Milford, Utah, slack and other sizes.

From Castle Gate to Lund, Utah, slack and other sizes.

From Castle Gate to Devil's Slide, Utah, slack.

"Rates on sheep, in double-deck cars, viz:

From Lakeside to Wahsatch, Utah.

From Cedar City to Kaysville, Utah.

"Rates on cattle, in single-deck cars, viz:

From Spanish Fork to Ogden, Utah.

"The foregoing findings relate to Utah intrastate rates generally, and are without prejudice to reexamination, upon complaint or otherwise, as to the lawfulness of any individual Utah intrastate rate on any particular commodity.

"An order will be entered carrying into effect the foregoing findings, unless this Commission is notified by the Utah commission, within 30 days from the date of service of this report, that it will permit the increase required to remove the unlawfulness herein found to exist."

The order, after reciting that the Utah commission had failed to notify the Commission within the 30-day period whether it would permit the increase in Utah intrastate rates required to remove the unreasonable and unjust discrimination caused by those rates against interstate commerce, directs the Utah railroads to cease and desist practicing such discrimination by establishing and maintaining for intrastate transportation of commodities (except those therein named) from and to points in Utah, "freight rates and charges which shall be no lower than the approved rates and charges thereon, as provided in said report" (R. 131-132).

PROCEEDINGS IN THE DISTRICT COURT

Appellants filed this suit against the United States of America and the Interstate Commerce Commission February 17, 1956, praying that the Commission's order be enjoined, annulled and set aside and that a temporary restraining order or interlocutory injunction be issued restraining and suspending the Commission's order until final hearing by the court (R. 1-15). Their complaint alleged that the Commission's order was unlawful and void on the principal grounds that the Commission's order in Ex Parte No. 175 granting a nation-wide 15%

increase in interstate rates was itself unlawful in that it granted a "flat horizontal percentage" increase in all freight rates and that any order of the Commission designed to bring intrastate rates into conformity with interstate rates resulting from the Ex Parte 175 order was "beyond the power and authority of the Interstate Commerce Commission and contrary to law;" that the Commission's findings in the instant case were not supported by substantial evidence; and that its order was an "unauthorized and unwarranted invasion of the reserved authority of the state over such intrastate rates in violation of the Constitution of the United States" (R. 11-15). The United States and the Interstate Commerce Commission filed answers denying the allegations of the complaint (R. 32-35). These railroad appellees intervened (R. 27-28) and also filed their answer denying that the Commission's order was unlawful or void and further denying the allegations of the complaint and praying that the complaint be dismissed (R. 19-21).

On March 10, 1956, District Judge Ritter issued a temporary order restraining and preventing the Interstate Commerce Commission and the intervening railroads from making the Commission's order effective, and rejecting a motion of the intervening railroads that the court impound the difference between the then existing intrastate rates and the rates that would be collected as increased by the Commission's order and to refund such difference to persons paying such increased rates if, upon final hearing, the Commission's order should be permanently enjoined and restrained (R. 28-32).

Upon final hearing the majority of the District Court (District Judge Christenson dissenting) held that the Commission's order was supported by substantial evidence

and was lawful and valid in all respects. The court dismissed the complaint and dissolved the interlocutory injunction (R. 39-49). The court entered findings of fact and conclusions of law (R. 65-72) and on June 18, 1956, entered its final decree dismissing the complaint (R. 73-75). Shortly after the final decree was entered the Utah railroads, appellees here, published their tariffs increasing the Utah intrastate rates in conformity with the Commission's order and have been and now are collecting the intrastate rates so increased.

SUMMARY OF ARGUMENT

The purpose of the National Transportation Policy is the "developing, coordinating, and preserving a national transportation system * * * adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense". To accomplish that purpose Congress placed the duty upon the Interstate Commerce Commission, by enactment of Section 15a(2) of the Interstate Commerce Act, to prescribe rates that will provide revenue sufficient to enable the railroads of the country to furnish adequate and efficient railway service. Congress left no part of that duty to the judgment or discretion of the Utah commission or any other state authority.

To prevent interference by state authority with the National Policy, Congress enacted Section 13(4) of the Act, empowering the Commission, upon finding that any intrastate rate or charge causes any undue or unjust discrimination against interstate commerce, to prescribe the rate or charge that will remove such undue discrimination, and the rate or charge so prescribed "shall be observed"—"the law of any State or the decision or

order of any State authority to the contrary notwithstanding.". *Florida v. United States,* 292 U. S. 1, 5.

The purpose of Section 13(4) was to enable the railroads of the country to have compensation "for the intrastate business reasonably proportionate to that for interstate business" and to "restrain undue limitation" (by state commissions) of the earning power of the interstate commerce system in doing state work", leaving State authorities to deal with intrastate rates "as between themselves on the general level" found by the Commission "to be fair to interstate commerce", *Wisconsin R. R. Comm. v. C., B. & Q. R. R. Co.,* 257 U. S. 563, 589-591.

The Commission's order in the instant case, directing that Utah intrastate rates be increased to the level of interstate rates found by the Commission to be reasonable and necessary to enable the railroads to accomplish the purposes of the National Transportation Policy is the direct result of continuing and persistent efforts of the Utah commission to frustrate and interfere with the National Policy by preventing Utah intrastate traffic from bearing its proportionate share of revenues necessary to provide an adequate national railroad transportation system.

I. The Commission's findings and order are amply supported by substantial evidence which shows that the return on the net investment of the railroads serving Utah was only 3.98% in 1948, 2.58% in 1949, 4.33% in 1950, 3.66% in 1951, 3.91% in 1952 and 3.44% in 1953.

The railroads' revenue per ton mile in 1952 on all traffic (interstate and intrastate) in Utah was only 1.258

cents, while in eleven adjoining or surrounding Mountain-Pacific States it was 1.398 cents, in the western district it was 1.393 cents, and in the entire United States it was 1.43 cents. Revenue per ton-mile in Utah increased only 29 percent over the 1939 base period, while in the other areas it increased 37, 36, and 47 percent, respectively.

Despite their accomplishments in increasing their efficiency and economy of operation, the Utah railroads have been faced with increased wages of employees and increased costs of supplies and materials used in their transportation work to the extent that they can not realize fair compensation without increased rates and charges for all of their work, including the transportation of intrastate traffic in Utah.

In Ex Parte No. 175 the Commission found that interstate rates increased by 15% were reasonable and necessary to enable the railroads of the country to provide an adequate railroad transportation system and that the increase should also be applied to intrastate traffic if the purpose of Congress was to be accomplished.

In the instant case the Commission found upon undisputed evidence that the interstate traffic and Utah intrastate traffic is handled in the same trains, by the same crews and transportation facilities, and that conditions incident to intrastate transportation of freight in Utah are not more favorable than those incident to interstate transportation between Utah and adjoining states; that the refusal of the Utah commission to permit the railroads to increase their intrastate rates in Utah to the level of the interstate rates found reasonable by the Commission for interstate traffic resulted in undue

and unjust discrimination against interstate commerce amounting to about $1,880,000 annually; that the Utah intrastate rates were abnormally low and the Utah intrastate traffic failed to produce its fair share of earnings required by the railroads to provide an adequate national railroad transportation system.

The Commission recognized that in a few isolated instances certain Utah intrastate rates were already as high or higher than interstate rates on the same commodities for comparable distances and expressly provided that no intrastate rates should be increased to a level higher than that of the comparable interstate rate, and further provided a "savings clause" that such increase in the level of Utah intrastate rates was "without prejudice to reexamination, upon complaint or otherwise, as to the lawfulness of any individual Utah intrastate rate on any particular commodity."

II. The Commission did not "presume", nor was it required to make a finding, that interstate and Utah intrastate rates were in "proper relationship" prior to the Ex Parte No. 175 increases, although the Commission had previously found that prior to 1935 the Utah intrastate rates generally "were upon the same level" as interstate rates to and from Utah, and the record in the instant case contains no evidence that anything has happened to disturb the then level of the two sets of rates except the persistent refusal of the Utah commission to permit increases in the intrastate rates in that State to the level of interstate rates as increased by the Commission. The Commission's finding that conditions incident to intrastate transportation of freight in Utah are not more favorable than those incident to the interstate transportation between Utah and adjoining states

is not based upon "common knowledge" as claimed by appellants, but upon undisputed evidence of experienced railroad witnesses which appellants admit established the fact found by the Commission.

III. Appellants' contention that the Commission ignored their evidence is contrary to the fact plainly shown by its report that the Commission carefully analyzed and considered the evidence submitted by appellants and other protestants, but found that their evidence was deficient, unreliable and lacking in probative force.

IV. In contending that the order in the instant case is void because of their further contention that the Commission's order in Ex Parte No. 175 authorizing a percentage or "horizontal" increase in interstate rates is itself void, appellants are making a collateral attack upon the order in Ex Parte No. 175. This Court has consistently held that such collateral attack can not be made upon an order of the Commission. *Callanan Road Co. v. United States*, 345 U. S. 507, and cases there cited.

ARGUMENT

INTRODUCTORY

The declared purpose of the National Transportation Policy of the Congress is the "developing, coordinating, and preserving a national transportation system • • • adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense." One means to that end is "to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers." Another is "to encourage the establishment and maintenance of reasonable charges for

transportation services, without unjust discriminations, undue preferences or advantages."

To implement and accomplish the ultimate purpose of the National Policy, Congress has placed upon the Interstate Commerce Commission, by enactment of Section 15a(2) of the Act, in the exercise of its power to prescribe just and reasonable rates, the duty of prescribing rates that will provide revenue sufficient to enable the railroads under honest, economical and efficient management, to furnish adequate and efficient railway service.

Congress left no part of that duty to the discretion or judgment of the Utah commission or any other state commission. Instead, and in the light of its own knowledge of timeworn and successful efforts of many states and their commissions to force undue preference and advantages, by compelling unreasonably and abnormally low freight rates for the intrastate traffic within their respective jurisdictions, Congress has, by enactment of Section 13(4) of the Act, expressly empowered the Commission to prevent state commissions from interfering with the National Policy to establish rates on all traffic that will provide revenues sufficient to develop and maintain an adequate national transportation system and enable the carriers to furnish adequate and efficient railway transportation service.

To this end, that section explicitly directs that upon finding that any intrastate rate, fare or charge "made or imposed by authority of any state," causes "any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful," the Commission "shall

prescribe the rate, fare, or charge" that "will remove such advantage, preference, prejudice, or discrimination." And, to make certain that the states and their commissions shall not interfere with the National Policy, that section provides that the rates, fares or charges so prescribed by the Commission "shall be observed"—"the law of any State or the decision or order of any State authority to the contrary notwithstanding." *Florida v. United States*, 292 U. S. 1, 5.

Thus, Congress intended, by Section 13(4) of the Act, that the railroad system of the country have "a reasonable compensatory return for all the work it does," including compensation "for the intrastate business reasonably proportionate to that for the interstate business," and it has, by Section 13(4), empowered the Commission to "restrain undue limitation [by state commissions] of the earning power of the interstate commerce system in doing state work," leaving state authorities to deal with intrastate rates "as between themselves on the general level" found by the Commission "to be fair to interstate commerce." *Wisconsin R. R. Comm. v. C., B. & Q. R. R. Co.*, 257 U. S. 563, 589-591. In the Ex Parte 175 proceedings, 284 I. C. C. 589, the Commission discharged its exclusive duty to determine revenue needs of railroads of the country as a whole and to authorize interstate rate increases calculated to provide the needed revenues.

The findings in Ex Parte No. 175 contemplated a like increase in intrastate rates and charges generally, including those sought to be made in Utah. *California Intrastate Freight Rates and Charges*, 289 I. C. C. 767, 780; *Louisiana Intrastate Freight Rates and Charges*, 291 I. C. C. 279, 314.

The Utah commission having refused to permit Utah traffic to bear any part of the needed revenues, the increases required on Utah traffic for the purpose of the National Policy must come through the exercise of the Commission's power under Section 13(4) of the Act.

In *Florida v. United States*, 282 U. S. 194, this Court held at pages 210-211:

> "The power of the Congress to authorize the Interstate Commerce Commission to establish intrastate rates in order to remove an unjust discrimination against interstate commerce is not open to dispute. * * * The authority granted by section 13(4) is thus to be considered in the light of the affirmative duty of the Commission to fix rates and to take other important steps to maintain an adequate national railway system.
>
> "As intrastate rates and the income from them must play a most important part in maintaining such a system, the effective operation of the Act requires that intrastate traffic should pay 'a fair proportionate share' of the cost of maintenance. And if there is interference with the accomplishment of the purpose of the Congress because of a disparity of intrastate rates as compared with interstate rates, the Commission is authorized to end the disparity by directly removing it. *Railroad Commission of Wisconsin v. Chicago, Burlington & Quincy Railroad Company, supra; New York v. United States, supra* (pp. 585, 586)."

The foregoing views were reiterated in a second decision in that case, *Florida v. United States*, 292 U. S. 1, wherein the Court held at pages 5-6—

> "Appellants insist that this result was reached because of what was described as the 'dovetail relation' between §13(4) and §15a, and that the amend-

ment of the latter section by Emergency Railroad Transportation Act, 1933, has effected a radical change. They contend that the Commission no longer has authority to remove an unjust discrimination against interstate commerce caused by a disparity of intrastate rates viewed from a revenue standpoint. We are unable to accept that view. Section 13(4) was not amended by Emergency Railroad Transportation Act, 1933. The authority conferred by §13(4) to prescribe intrastate rates for the purpose of removing an unjust discrimination against interstate commerce was not withdrawn. The Congress had knowledge of the construction given to §13(4) by this Court and of the important effect of that construction in relation to intrastate rates found to be inadequate. The conclusion is not lightly to be reached that the Congress would have undertaken to change a policy of such great importance without explicit language indicating that purpose."

INTRANSIGEANCE OF THE UTAH COMMISSION

By Transportation Act 1920 (41 Stat. L. 484), Congress, for the first time, conferred upon the Commission, through the provisions of Section 13(4), the direct power to remove unjust discrimination against interstate commerce resulting from refusal of the several states and their commissions to permit increases in the intrastate rates within their respective states to a level commensurate with the level of interstate rates.

From the time it acquired the direct power over intrastate rates in 1920 to the date of its order in the instant case, the Commission has authorized nine general nation-wide increases in interstate freight rates, with the expectation and intention that the several states would authorize similar increases in intrastate rates. In each of the nine instances, the Utah commission initially de-

ried, in whole or in part, similar increases in intrastate rates in that state (see R. 169-174). Following eight of the nine general interstate rate increases, the railroads operating in Utah have been compelled, in their efforts to derive adequate revenues from the Utah intrastate traffic, to invoke the Commission's powers under Section 13(4) of the Act, after the Utah commission had refused to permit increases requested in Utah intrastate rates commensurate with the increases authorized by the Commission in interstate rates. The cases in which the Commission authorized interstate rate increases and the companion cases in which that Commission felt compelled to exert its authority over Utah intrastate rates are cited in Appendix B hereto.

Until the instant case, the Utah commission, after first refusing, in whole or in part, the requested increases in intrastate rates and following the long delays incurred in necessary proceedings before the Commission under Section 13 and findings of discrimination against interstate commerce caused by the Utah intrastate rates, has finally given its permission to the Utah railroads to increase their intrastate rates in Utah without making it necessary for the Interstate Commerce Commission to issue a mandatory order. This the Utah commission did "in order to avoid the freezing of Utah intrastate railroad rates by federal order" (R. 448).

The long delays resulting from the resistant attitude of the Utah commission against permitting the Utah railroads to increase their intrastate rates in that state has, of course, deprived the railroads of vast amounts of revenue and has gone far toward frustrating and defeating the Congressional intention that Utah railroads shall have compensation "for the [Utah] in-

trastate business reasonably proportionate to that for interstate business" (ante, p. 14).

The following statement in the Commission's report in the instant case (R. 97) is demonstrative of the delaying and frustrating tactics of the Utah commission, and consequent revenue loss by the railroads—

> "In *Utah Intrastate Freight Rates and Charges*, 287 I. C. C. 315, decided December 1, 1952, the respondents asked that we require the Utah Commission to authorize them to increase the intrastate rates and charges corresponding to the interstate increases authorized in Ex Parte No. 162, 266 I. C. C. 537; Ex Parte No. 166, 270 I. C. C. 93, and 270 I. C. C. 403, and Ex Parte No. 168, 276 I. C. C. 9, which increases had been withheld in whole or in part by the Utah Commission. Therein, we found that such increases in the intrastate rates and charges should be permitted, and the Utah Commission by order dated March 18, 1953, authorized respondents to increase their intrastate rates and charges to reflect the interstate increases authorized through and including Ex Parte No. 168. *These increases did not become effective on intrastate traffic until May 1, 1953, or a year after authorization of the third increase in Ex Parte No. 175, above referred to, became effective on interstate traffic.* The respondents estimate that they are being deprived of approximately $1,880,000 annually as a result of the failure of the Utah Commission to permit the increases here sought." (Italics added.)

Further evidence of the Utah commission's determination to prevent Utah intrastate traffic from bearing its share of revenues necessary to maintain an adequate national railroad transportation system appears in the decision of the Commission cited in the above quotation, *Utah Intrastate Freight Rates and Charges*, 287 I. C. C.

315. Referring to increases it had authorized in Ex Parte 166, the Commission's report states at pages 318-319:

> "Thereupon the respondents petitioned the Utah commission for authority to increase their intrastate rates in Utah to the extent authorized by us in Ex Parte No. 166 in the interstate rates. Instead of granting increases to the extent requested, the Utah commission permitted an increase of only 15 percent in the rates on sugar beets, wet or dry beet pulp, limerock (ground or unground), and residual molasses; refused to permit any increase in the rates on nonferrous ores and concentrates (including precipitates, matte, slag, speiss, and flue dust); and on coal and coke permitted increases, per net ton, of only 10 cents in rates of $1.15 or less, 15 cents in rates $1.16 to and including $2.50, and 20 cents in rates above $2.50. In addition, the Utah commission permitted only 50 percent of the maximum increases granted by us on specified commodities. *Later, upon the expressed consent of the intrastate receivers of iron ore at Geneva and Ironton, Utah, the Utah commission granted the full increase authorized by us in the rates on that commodity only to those two points.*" (Italics added.)

With respect to the Utah commission's refusal to permit any part of the increases authorized by the Commission in Ex Parte 168, the report recites at pages 319-320:

> "• • • [i]n dismissing the respondents' petitions, the Utah commission stated that the evidence submitted by the carriers did not show whether 'the revenues from Utah intrastate traffic produce a fair return on that portion of the investment used on Utah intrastate traffic,' and allowed the carriers 90 days to apply for 'further hearing to produce evidence concerning the railroads' operations within the State of Utah.' In dismissing, without prejudice, the carriers' petitions, the position of the Utah commission

was that it could not determine whether the carriers' revenues from Utah intrastate traffic was inadequate unless and until the carriers proved that fact by evidence segregating the expenses incurred in transporting Utah intrastate traffic and comparing them with the revenues derived therefrom. The carriers did not request further hearing in that case because, as repeatedly explained by them to the Utah commission, they considered it impossible to segregate expenses in handling intrastate traffic from the expense of handling interstate traffic.

"In addition to the foregoing, the Utah commission failed to grant the full increases authorized for interstate traffic in Ex Parte Nos. 162 and 166 in the carload rates on coal ashes, coal cinders, coke ashes, coke cinders, crude dolomite, limestone, pumice, sand or gravel, oystershells, et cetera, furnace slag, other than ground open-hearth basic slag, n. o. i. b. n., gannister rock, stone (marble or granite), fluxing stone, and iron-ore tailings."

I. THE COMMISSION'S FINDINGS AND ORDER ARE AMPLY SUPPORTED BY SUBSTANTIAL EVIDENCE

In the instant case the Commission said (R. 117-118):

"* * * [t]he Ex Parte No. 175 increases were authorized for interstate rail traffic throughout the country based upon the total revenue needs of the railroads generally, and have been made effective on interstate traffic generally as well as on intrastate traffic within most of the States. The railroads' need for additional revenue to meet increased operating expenses was the underlying basis for our decision in that proceeding. Those increased operating costs were not confined to interstate traffic, but were and are incurred also on Utah intrastate traffic."

Supplementing the evidence on which the Commission made its findings in Ex Parte 175, the Utah railroads

submitted into the record in the instant proceeding abundant evidence of their need for the additional revenue from Utah intrastate traffic contemplated by the Commission in Ex Parte 175. They also demonstrated the economic ability of that traffic to bear its share of the needed revenue and that they would realize such revenue if permitted to increase their intrastate rates to the extent authorized by the Commission in Ex Parte 175. This evidence is found in the testimony of Witness Kroll (R. 140-154) and in his Exhibits 1 and 2 (R. 419 and 426) and in the testimony and exhibits of other witnesses.

1. *UTAH RAILROADS' REVENUE NEEDS.*

Exhibit 2, page 1, shows that the gross property investment of Class I railroads serving Utah in road and equipment used in transportation service, plus cash and material and supplies, was $2,886,823,152 in 1948, and ranged from $2,987,791,493 in 1949 to $3,538,000,304 in 1953. The net property investment, averaged as of the beginning and end of the year was $2,377,643,947 in 1948, and ranged from $2,417,049,082 in 1949 to $2,842,418,11[illegible] in 1953. The percentage of return on the net investment was 3.98% in 1948, 2.58% in 1949, 4.33% in 1950, 3.66% in 1951, 3.91% in 1952 and 3.44% in 1953 (R. 427).

Total operating revenues of these Utah railroads in 1953 showed an increase of $211,588,516, or about 22%, over 1948. However, in 1953, there were increases in operating expenses of $151,268,304, or about 20%, and $57,232,823, or over 38%, in Net Rents-Debit and Railway Tax Accruals over 1948.

Their net railway operating income in 1948 was $94,576,606 as compared with $97,663,995 in 1953, reflecting an increase in the latter year of $3,087,389, or slightly over 3%, in net railway operating income. From the foregoing, it will be noted that, while the railroads serving Utah had $211,588,516, or about 22% more *gross* revenue in 1953 than they had in 1948, nevertheless, this substantial increase in revenues actually produced only $3,087,389, or slightly over 3% more *net* railway operating income than these Utah carriers realized in 1948.

Operating ratio of the Utah railroads in 1948 was 75.99%, reached a high of 79.91% in 1949, a low of 71.35% in 1950, and since that time has been steadily rising and reached 75.21% in 1953.

Page 2 of Exhibit 2 shows the totals of operating revenues, expenses and the net railway operating income of these same Utah railroads for the first three months of 1954 as compared to a like period in 1953. It will be noted that there are decreases in total operating revenues of $40,152,776; in total operating expenses of $18,848,736; and in net railway operating income of $6,476,206 in the first quarter of 1954 as compared to the like period in 1953. The decrease in net railway operating income is serious, reflecting a reduction of almost 28% under that for the same period in 1953 (R. 428).

Page 3 of Exhibit 2 shows that the average number of employees of the Class I carriers serving Utah in 1948 was 129,492 which declined in 1949 to 120,772 and has been rising steadily until in 1953 it reached 133,013; the average straight time hourly rate of pay increased each and every year from 1948 to and including 1953

from $1.301 in 1948 to $1.898 in 1953; the total straight time compensation of employees of the Utah Class I roads, which was $386,845,411 in 1948, declined to $381,446,301 in 1949 and has steadily increased since that time to $530,506,590 in 1953, an increase of about 37% over 1948.

These figures for 1953 do not include a settlement with the operating brotherhoods amounting to a five cents an hour increase and three weeks vacation with pay after fifteen years of service, nor the cost of living adjustment which was made for non-operating employees, nor the seven or eight cents per hour in fringe benefits recommended by the Presidential Board for non-operating employees. Each one cent per hour increase in wage rates of railroads in the Western District increases their pay roll costs about $13,000,000 per year (R. 150). The foregoing additional increases will aggregate about 78 million dollars per annum increase in pay roll costs for the Class I railroads serving Utah.

Page 4 of Exhibit 2 demonstrates what has happened in the price field of all materials and supplies purchased by the railroads since July of 1949. Comparing January of 1954 with July of 1949, it is to be noted that materials and supplies, other than fuel, have increased 24.7%. Fuel, which is the weighted average of both coal and petroleum products, increased 13.7% and the weighted average of all materials and supplies, including fuel, show an increase of 20.6%. Wages and cost of materials and supplies constitute 90% of carriers' operating expenses, and the remaining 10% consist of such items as depreciation, amortization, insurance, injury to persons, etc., which do not include elements of either wages or materials and supplies (R. 151).

Witness Kroll's Exhibit 1 (R. 420) deals generally with economic trends in the United States, the Western District, the Mountain-Pacific States and the State of Utah.

In pages 1 to 6 of Exhibit 1, 1939 has been used as the base year, this being the first full year following Ex Parte No. 123, which was the last prewar increase rate proceeding before the Commission and the various State Commissions. Pages 5 and 6 of Exhibit 1 shows that in 1952 the revenue per ton mile of the railroads in the United States was 1.43 cents, in the Western District 1.393 cents, in the Mountain-Pacific States, including Utah, 1.398 cents, and in the State of Utah on intrastate and interstate traffic 1.258 cents. Using the earnings in 1939 as a base, such figures for 1952 in the United States represented an increase of 47%, in the Western District 36%, in the Mountain-Pacific States 37% and in the State of Utah only 29% over 1939. Probably one of the reasons why Utah shows an increase of only 29% in earnings per ton mile is that the increase of 15% in Ex Parte No. 175 had not been made effective on Utah intrastate traffic (R. 144).

In the year 1953, revenue per ton mile in the United States was 1.478 cents and in the Western District 1.431 cents, representing increases of 52% and 40%, respectively, over 1939. The figures for the Mountain-Pacific States and the State of Utah for 1953 were not available (R. 142).

Pages 2, 3 and 4 of Exhibit 1 show the following data for the United States, using the year 1939 as the base period: page 2, the indexes of wholesale prices by major groups; page 3, the indexes of the Consumers

Price Index by major groups, and page 4, the indexes of the prices received by farmers. Pages 5 and 6 thereof show the indexes of the ton mile earnings of railroads as previously referred to.

All of such indexes are brought together and compared in the graph on page 1 of Exhibit 1 and, as will be noted when compared to 1939, increases in revenues per ton mile of the railroads in 1953 in the Western District represent only 40% and in the United States 52%, whereas the other indicators of economic situations showed the following increases: Cost of Living Index 93%, Wholesale Prices 120% and Prices paid to Farmers 172% (R. 142).

2. *EFFICIENCY AND ECONOMY OF RAILROADS' OPERATIONS*

Witness Kroll submitted, on page 5 of Exhibit 2, statistical data demonstrating the great gains of the railroads in the Western District in efficiency and economy in their operations and expressed the opinion that the situation of the five Class I railroads serving Utah would not be dissimilar to that of the railroads throughout the West as a whole. There has been substantial improvement, 1952 compared with 1939, as well as substantial improvement, 1952 compared with 1949, which was about the time of Ex Parte No. 175. A major portion of the increased efficiency has been brought about only by substantial expenditures in the nature of capital improvements, including the purchase of larger and better freight cars and diesel-electric locomotives (R. 152). Comparing 1939 with 1952, these data show:

	1939	1952
Average capacity per freight car (tons)	45.9	50.5
Freight car miles per serviceable freight car-day	39.2	54.8

Net ton-miles per serviceable freight car-day	588	1049
Net tons per loaded car	24	30.2
Freight train load (tons)	684	1213
Freight train speed (miles per hour)	17.8	19
Gross ton-miles (trailing load) per freight train hour	32190	52066
Freight locomotive miles per active locomotive day	105.8	137.2

Of these items, perhaps the more significant are the net ton-miles per serviceable freight car which increased nearly 80% from 1939 to 1952 and the gross ton-miles (trailing load) per freight train hour, which increased better than 60% from 1939 to 1952.

From the foregoing, it is clear that, as found generally by the Commission in Ex Parte No. 175, the Utah railroads are efficiently operated and their need for additional revenue from Utah intrastate traffic is not due to inefficient or uneconomical management, but to increased wages, cost of materials and supplies and other causes beyond their control. In fact, it is only with such efficiency, improvements and the rate increases granted by the Commission that the Utah Class I railroads' financial showing has held up even to the low level shown in Exhibit 2 as summarized earlier.

3. *THE WIDE DISPARITY BETWEEN UTAH INTRASTATE RATES AND INTERSTATE RATES RESULTS IN UNJUST DISCRIMINATION AGAINST INTERSTATE COMMERCE BY APPROXIMATELY $1,880,347 ANNUALLY.*

Exhibit 6 (R. 451) shows the total tons of heavier moving commodities, which originated on the Denver and Rio Grande and the Union Pacific in Utah during the year 1953. Their percentage relation, 79.15 percent, to the total tons of all carload freight originated by

those railroads in Utah in 1953, reflects their importance to the Utah railroads.

Exhibit 7 shows the total carloads, intrastate and interstate, of the same commodities as in Exhibit 6, which terminated on the Utah railroads in the months of May, August and November, 1953, and February, 1954, totalling 16,529 intrastate carloads and 3,784 interstate carloads, and for the full year of 1953, 80,289 intrastate carloads and 18,758 interstate carloads. Exhibits 8 to 24, both inclusive, show the Utah destinations receiving either and both the intrastate and interstate carload shipments set forth in Exhibit 7.

Revenue effects of the disparity favoring Utah intrastate traffic was made the subject of a special study by respondents. Witness Kroll described the methods used in making the study (R. 152-153), and showed, on pages 6 and 7 of Exhibit 2, as a result of the refusal of the Utah commission to permit the increases granted by the Commission in Ex Parte No. 175, the Utah railroads were being deprived of $1,880,347 annually, based on the 1953 Utah intrastate traffic movement, which consisted of 142,854 carloads weighing 8,296,542 tons; less-than-carload freight weighing 7,647 tons and 15,120 cars switched in various types of switch movements. The largest loss in revenue is $1,532,550 on products of mines; next is $263,868 on manufactures and miscellaneous, and third is $47,679 on animals and products, which three categories represent about 98% of the total (Exhibit 2, pages 6 and 7).

4. *ECONOMIC CONDITIONS IN UTAH SHOW THAT ITS INTRASTATE TRAFFIC SHOULD NOT BE PREFERRED BY EXEMPTING IT FROM BEARING ITS SHARE OF REVENUE NEEDED BY THE UTAH RAILROADS.*

It is clear from Exhibit 1 and Witness Kroll's testimony that there is no possible justification for the

Utah commission's preferential treatment of the traffic of that State or for the resulting discrimination against interstate commerce. Economic conditions in Utah have made progress equal to or better than in other areas and nationally. In mining, one of the principal tonnage producing industries in Utah, the value of mineral production in the year 1939 was 79 million dollars, and in 1950 was 229 million dollars, an increase of 190% (R. 146, Exhibit 1, page 11).

Total income payments to individuals in Utah in 1952 was 340% greater than in 1939 as compared to increases of 300% in the Western District, of which Utah is a part, and 262% in the United States (R. 144, Exhibit 1, page 7).

Income payments *per capita* in 1939 were $443 in Utah, $510 in the Western District and $539 in the United States. By 1952, income per capita of individuals in Utah had increased to $1,450, those in the Western District to $1,661, and those in the United States to $1,639. The percentage of increase in Utah was 227%, in the Western District 226% and in the United States 204%. This compares rather favorably with the 226% in the Western District, as a whole, and the 204% in the United States, and shows that, relatively speaking, Utah has shared in the increased prosperity of the country during the period 1939 through 1952 (R. 144, Exhibit 1, page 7).

Cash farm income in Utah increased from $136,761,000 in 1946 to $175,747,000 in 1952 (R. 146, page 10 of Exhibit 1).

In population, Utah has shown a growth of 36% from 1939 to 1952, as compared to a growth of 23% in

the Western District and 19% in the United States, as a whole (R. 145, pages 8, 9, Exhibit 1).

Quite frequently in the West the claim is made that it is strictly an agricultural area and somewhat in the nature of a colony to the industrialized East. Comparing the year 1952 to 1939, the increase in nonagricultural employees in the United States, as a whole, was 58%, in the Western District 71% and in Utah 93%. This indicates that, relatively speaking, Utah is increasing its nonagricultural employment faster than either the Western District, of which it is a part, or the United States. It should also be noted that the per cent of nonagricultural employees to total population in Utah is 28.96%, in the Western District 29.02% and in the United States 30.81% (R. 145, page 9 of Exhibit 1). The foregoing figures indicate that Utah has been somewhat successful in changing its general situation from an agricultural status to something that is not related to agriculture.

In the matter of population per automobile registered, Utah has one automobile registered for every 3.4 persons, as compared to 3.2 persons in the Western District and 3.6 persons in the United States, and 2.8 persons in the Mountain-Pacific states (R. 146, page 13, Exhibit 1).

In addition to the evidence and exhibits of Witness Kroll, Witness G. M. Watson, Assistant Freight Traffic Manager of the Union Pacific, with 37 years' experience in traffic and rate work, introduced in evidence and testified relative to Exhibits 3 to 38, both inclusive (R. 167-190).

Witness T. K. Earley, Freight Traffic Manager of the Denver and Rio Grande Western, with 35 years experience in traffic and rate work, introduced in evidence and testified concerning Exhibits 40 to 63, both inclusive (R. 248-263).

In order to show distribution of the heavier moving commodities, maps, Exhibits 8 to 24, both inclusive, were made part of the record showing stations in Utah at which all of the intrastate and interstate carload shipments were terminated in the months of May, August and November of 1953 and February, 1954, at destinations on the Utah railroads.

Exhibits 25 to 36, both inclusive, show all carload shipments of the commodities listed thereon moving intrastate and examples of carload shipments moving interstate to destinations in Utah on the Utah railroads, during the months of May, August and November, 1953, and February, 1954.

Exhibits 40, 41, 49, 50, 52, 53, 62 and 63 show all carload movements of commodities listed thereon moving intrastate and interstate to destinations in Utah on the Utah railroads during the months of May, August and November, 1953, and February, 1954.

As shown, and set forth in considerable detail in the Commission's report (R. 100-114), the record contains extensive evidence with respect to the movement, volume, competition between intrastate and interstate traffic, comparisons showing the higher level (with a few exceptions not here pertinent) of the interstate rates compared with Utah intrastate rates on the following commodities:

Coal
Coke
Iron Ore
Manufactured Iron and Steel Articles
Lead and Zinc Ores, and Ores and Concentrates
Uranium and Vanadium Ores
Waste Materials for Remelting
Clay and Bentonite
Sand and Gravel
Lime Rock
Fuel and Road Oil
Gasoline
Cement
Sugar
Wheat
Animal and Poultry Feed
Sheep and Goats
Cattle and Calves
Class and Merchandise Rates

The railroads' annual revenue loss on some of these commodities is shown in connection with the discussion of them in the Commission's report (R. 100-114). Page 6 of the railroads' Exhibit 2 (R. 432) shows the revenue loss on the Utah intrastate traffic by classes of commodities, as follows:

	Revenue Loss
Products of Agriculture	$ 4,536
Animals and Products	47,679
Products of Mines	1,532,550
Manufactures and Miscellaneous	263,868
Grand Total, Carload traffic	$1,848,633
All L. C. L. Freight	18,243
Grand Total Carload and L. C. L. Traffic	$1,866,876

It is vitally significant that the record shows (negatively, of course) that no freight rate payer or shipper

or receiver, who actually bears the financial result of increased freight rates, opposed the 15% increase in Utah intrastate rates, except T. C. Taylor (R. 400), who appeared in opposition on behalf of the Ideal Cement Company. As shown in the Commission's report (R. 102), the increase in intrastate rates on coal was opposed by the Utah Coal Operators Association, representing producers of coal in Utah, but not shippers or receivers who pay the freight rates; the Utah Citizens Rate Association opposed increases in the rates on manufactured iron and steel articles (R. 106) and in class and merchandise rates (R. 114); and the Utah Mining Association (R. 107) opposed increases in the intrastate rates on ores and concentrates. These associations, however, are not freight rate payers, but instead are more in the nature of professional objectors to anything which might increase the ultimate sales price of their members' products to customers who do pay the freight rates. The revenue loss or the addition of the 15% to the intrastate rates on iron ore amounted to $634,680 (R. 105), but no one appeared in opposition to the increase in the rates on this commodity, which is the most important of the entire list from the revenue standpoint.

Appellants do not dispute or deny the accuracy of any of this mass of evidential facts. Instead, as we understand their position, they contend that this vast amount of evidence affords no basis for the Commission's finding that the lower level of the Utah intrastate rates results in unjust and undue discrimination against interstate commerce. Appellants seem also to contend that the Commission should have held that the large amount of evidence submitted by the railroads was over-balanced and outweighed by evidence submitted by appel-

lants concerning two or three items or aspects of the case, as they see it.

As appellants do not question the Commission's power to exercise authority over intrastate rates, nor the adequacy of the findings made by the Commission, but, instead, base their case upon the contention that the Commission's findings and the order are not supported by substantial evidence, we proceed now to cite and discuss the evidence of record which furnishes ample support and a substantial evidential basis for each of the findings made by the Commission.

Finding 1. This finding is that conditions incident to intrastate transportation of freight in Utah "are not more favorable" than those incident to interstate transportation between Utah and adjoining States.

The finding is fully supported by the evidence of Witnesses Jensen, Assistant Superintendent for the Union Pacific Railroad, who has jurisdiction over all of that company's lines in Utah (R. 242-248), and Bradford, Vice President of The Denver and Rio Grande Western Railroad Company (R. 317-323). The evidence of these two operating witnesses, Jensen with 23 years experience and Bradford with 40 years experience, on their respective railroads, shows that intrastate and interstate traffic hauled by railroad in Utah is handled on the same trains, by the same crews and other employees and through the same yards and other facilities. Witness Jensen testified (R. 244)—

> "We don't make any distinction between the two traffics, in fact the same crews, the same clerks, and the same trains haul interstate traffic as intrastate traffic.
>
> * * * * *

"It is intermingled traffic in all the trains, intermingled interstate and intrastate.

* * * * *

"L. C. L. [traffic] is intermingled in the same car, it is loaded in the same car by the same crews billed by the same clerks and it is intermingled in the same car and just separated at its destination, as it arrives at the destination."

Witness Jensen further testified (R. 244-246) that the Union Pacific has 11 branch lines in Utah, consisting of 225½ miles and that the Union Pacific's main line mileage in Utah is 452½ miles; that both intrastate and interstate shipments are handled on all of the branch lines as well as the main line and that on both the main line and the branches interstate and intrastate shipments in Utah move under "[i]dentically the same conditions."

Witness Bradford testified (R. 317-322) that intrastate and interstate traffic handled by The Denver and Rio Grande in Utah is intermingled in the same trains with "[n]o distinction whatever" in the handling of the two types of traffic; that "[w]e do not differentiate in our traffic at all;" that both types of traffic are handled by the same train crews and by "[t]he same agent, the same accounting department, the same traffic department, we don't make any distinction in any of our departments, except to the extent that we do make certain reports to state commissions based on certain formulas that attempt to make an allocation between certain states."

Witness Bradford further testified that the same situation prevails in the handling by the Denver and

Rio Grande of less than carload shipments which are intermingled in the same car.

Witness Bradford testified that a large part of the Denver and Rio Grande traffic originates on mountainous branch lines in Utah and moves intrastate in that state; that rates of pay for train crews operating in mountainous territory are higher than rates of pay in non-mountainous areas, thus increasing the cost of hauling that traffic. Comparing the handling of traffic on the main line and branch lines of the Denver and Rio Grande in Utah, Witness Bradford said:

> "Well, it is somewhat of a relative proposition. You take the Sunnyside branch where we originate the coal for the Kaiser people, and also where we receive from the Carbon County Railroad the coal that originated from Geneva, and we handle awfully big trains, very big trains. Those are you might say captive mines, although they are commercial mines on that same branch. If you move to our Spring Canyon branch, which is a very difficult branch from an operating standpoint, because of the high grades, we are restricted to the size of train that we can handle there. We only handle 50 percent of the cars on the train on the Spring Canyon branch that we do on the Sunnyside branch. Up on the Kenworth branch where the big Independent mine is located the same situation exists.
>
> "The Sunnyside branch will average more cars per train for example from Sunnyside down to Mounds, the main line point, than we can from Mounds on the main line into Helper. It is pretty difficult. But normally your main line movements are larger than your branch line movements." (R. 321)

None of this testimony was disputed or contradicted by appellants or any other party of record. In other 13th Section proceedings the Commission has deemed sufficient evidence which justified a finding that intrastate and interstate traffic are handled under substantially similar circumstances and conditions. *Montana Intrastate Freight Rates and Charges*, 284 I. C. C. 167, 177, 204; *Utah Intrastate Freight Rates and Charges*, 287 I. C. C. 315, 343; *Wyoming Intrastate Freight Rates and Charges*, 287 I. C. C. 743, 755; *California Intrastate Freight Rates and Charges*, 289 I. C. C. 767, 779, 780. And the courts have held such finding ample to support the orders of this Commission. *Illinois Commerce Comm'n v. U. S.*, 292 U. S. 474, 482, 483; *King v. United States*, 344 U. S. 254, 273.

In *Emergency Freight Charges Within Utah*, 213 I. C. C. 249, the Commission found at page 256—

> "We find that the transportation of the intrastate traffic under the rates here in issue and of the interstate traffic to and from points in Utah takes place under substantially similar circumstances and conditions. * * *"

In *Utah Intrastate Freight Rates and Charges*, 287 I. C. C. 315, the Commission made the following findings at page 325—

> "The figures above shown reflecting increased operating costs, pertain to the respondents' entire systems. There is no separation as between interstate and intrastate traffic. Intrastate traffic handled within Utah and interstate traffic to, or through points in that State are handled in the same trains, by the same crews and other employees, and through the same yards and other facilities. In the loading, unloading, and line-haul movement no distinction is made between intrastate and interstate traffic.

"While there is no practical way of separating operating expenses as between interstate and intrastate traffic, the latter is developed principally on branch lines, and is handled in local trains as to which, because of certain operating difficulties, the train crews receive a higher rate of pay than those operating on main lines in other than local train service. The bulk of the Utah intrastate traffic handled by the Union Pacific is in mountain territory where there is better than a 2-percent grade, requiring extra precautions, extra braking devices on cars, and restriction on the number of cars and tonnage per train or per locomotive."

At page 343, the Commission further found—

"The proportionate percentage of each individual class of traffic moving intrastate and interstate is not shown. Nevertheless, where, as is the case here, the intrastate and the interstate traffic, as a whole, moves under substantially similar circumstances and conditions, and the expenses of handling the two classes of traffic, being so interwoven that no practicable method of separating them is available, there is no occasion for any attempt to segregate costs of intrastate service from those of interstate service."

Appellants attempt by a weird and wholly fallacious process to escape or nullify the probative effect of the undisputed testimony of witnesses Jensen and Bradford. (Jurisdictional Statement pages 8-9.) First, they concede that the undisputed testimony of those two witnesses "establish that the railroads handled interstate and intrastate freight in the same manner without distinction." But, they say—

"This, however, was not a matter that required any evidence. It is a matter of common knowledge * * *

of which the Commission and the courts should and have taken judicial notice."

Then they condemn "common knowledge" as lacking adequate evidential support, by saying—

"* * * [t]o rely entirely on such state of facts [common knowledge] to establish that 'all factors bearing on the reasonableness of the rate' are the same, ignores the all important element of density of traffic."

Clearly, the Court must reject this fantastic method of attempting to escape the impact and probative force of undisputed evidence, and to establish a basis for attacking the Commission's order. Whether the railroads handle interstate and Utah intrastate traffic in the same trains, by the same crews, over the same rails and through the same facilities plainly is not a matter of "common knowledge" but is a question of fact to be established by evidence. The Commission did not rely upon "common knowledge." It properly relied upon the undisputed testimony of Witnesses Jensen and Bradford which, appellants admit, "established that the railroads handled interstate and intrastate freight in the same manner without distinction."

Moreover, the matter for the Commission's determination was not the "reasonableness" of the Utah intrastate rates, for; as held by this Court in *United States v. Louisiana*, 290 U. S. 70, 78—

"* * * §13(4) does not in terms require the Commission to find that the intrastate rates which it prescribes are reasonable. * * *"

The question for the Commission's determination was "that of the relation of [Utah intrastate] rates to

income," *Florida v. United States,* 282 U. S. 194, 214. Hence, there was no necessity for evidence covering "all factors," including "density of traffic" bearing upon the "reasonableness" of the Utah intrastate rates. As held by this Court in the *Louisiana* case, *supra,* page 79—

> "* * * [i]t sufficed that the Commission found that Louisiana showed nothing in the circumstances of its agriculture and industry or its traffic conditions so different from the rest of the country as to lead to the conclusion that the intrastate rates, raised to the reasonable general interstate level, would not themselves be reasonable; and that it saved the rights of interested parties to test the reasonableness of any individual rate."

Finding 2. This finding is that the amounts and percentages by which interstate freight rates and charges between points in Utah and points in other states were increased, as authorized in Ex Parte 175 "are just and reasonable". In Ex Parte 175, after long and tedious proceedings and upon voluminous evidence (284 I. C. C. 589), the Commission found that "all basic freight rates and charges of petitioning railroads", except as therein provided, "may be justly and reasonably increased 15 percent" (284 I. C. C. 661). At page 660 of its report in that case the Commission stated that the factual situation before it establishing the railroads' need for additional revenue called for the exercise of its duties as summarized by this Court in *I. C. C. v. Jersey City,* 322 U. S. 503, 522-523, and that—

> "* * * [w]e are responsible for maintaining a system of transportation adequate for the purposes of national defense. We are without power to protect the essential transportation agencies from rising labor

and material costs, such as the foregoing report shows have come upon them. We can decide only how such unavoidable costs shall be met. Our choice, as indicated by the Court, is between (1) increased rates and charges, (2) defaults and receiverships and reorganizations, or (3) offsetting inadequate service or delayed maintenance. All these considerations must be weighed by us with the needs of national defense, as well as avoiding inflationary tendencies, as a public responsibility. Considering as well the needs of commerce, the rule laid down in the declaration of national transportation policy for our guidance in administration of the act, *the choices of determination stated by the Court eliminate the second and third and leave only the first as conforming to the standard.*" (Italics added.)

"For the reasons stated in our former reports, and upon the record then before us, supplemented and now far more extensive and current, we conclude that we should now authorize further increases in rates and charges beyond those previously authorized, substantially as sought by petitioners. The findings made reflect this conclusion."

In connection with its findings in Ex Parte No. 175 that interstate rates "may be justly and reasonably increased 15 percent", the Commission found (284 I. C. C. 612)—

"Judged by any standard shown of record, the rates of return earned or prospectively to be earned by the railroads by the districts and regions specified in our former reports in this case, are substandard. Some important roads are earning little enough that a continuance of the earnings situation will imperil their solvency, while some are in comfortable condition. Neither the strongest nor the weakest lines can control the rate adjustment; and as has been shown, the great body of the rail carriers are in the middle class, with aggregate earnings that for the

immediate future must be considered as substandard, and inadequate."

In the instant case the Commission found (R. 117-118)—

> "The record is convincing that the transportation conditions affecting Utah intrastate traffic differ in no material respect from those affecting interstate traffic to and from that State, and that Utah intrastate traffic is no less able to bear the full increase sought than the interstate traffic. The Ex Parte No. 175 increases were authorized for interstate rail traffic throughout the country based upon the total revenue needs of the railroads generally, and have been made effective on interstate traffic generally as well as on intrastate traffic within most of the States. The railroads' need for additional revenue to meet increased operating expenses was the underlying basis for our decision in that proceeding. *Those increased operating costs were not confined to interstate traffic, but were and are incurred also on Utah intrastate traffic.*" (Italics added.)

As said by this Court in *King v. United States*, 344 U. S. 254, at page 272—

> "In the absence of any showing that it is not applicable to Florida [Utah], the evidence which forms the basis of the Commission's nationwide order [Ex Parte 175] becomes the natural basis for its Florida [Utah] order."

In *Arkansas Public Service Commission v. United States*, 147 F. Supp. 454, affirmed by this Court October 14, 1957, the opinion of the three-judge court, by Circuit Judge Whittaker, sustaining a 13th Section order of the Commission (so far as here pertinent) requiring increases in Arkansas intrastate rates, said at pages 463-464—

"Here the Commission has applied to the Arkansas intrastate rates the same conclusions it reached, in Ex Parte Nos. 166, 168 and 175, as to the need of the rail carriers for increased revenue on a national basis and has distributed the burden within Arkansas on the same lines it followed when estimating the revenues available in the southwestern territory from intrastate as well as interstate operations, as was done in Florida and approved by the Supreme Court in the King case, 344 U. S. at page 272, 73 S. Ct. at page 269, and here, as in that case, 'The evidence which forms the basis of the Commission's nation-wide order becomes the natural basis for its [Arkansas] order'. King case, 344 U. S. at page 272, 73 S. Ct. at page 269.

"As was said, under like circumstances, in Illinois Commerce Commission v. United States, 292 U. S. 474, 483-484, 54 S. Ct. 783, 787, 78 L. Ed. 1371:

'The decision in the first proceeding, that the increase in the interstate rate was reasonable, was made in the hope that the state commissions would bring intrastate rates into harmony. When they failed to do so, the Commission reaffirmed its finding that the new interstate rates were reasonable and found that the intrastate rates must be raised in order that the intrastate traffic may bear its fair share of the revenue burden. It is plain from the nature of the inquiry that the rate level, to which both classes of traffic were raised, was found reasonable on the basis of the traffic as a whole. Where the conditions under which interstate and intrastate traffic move are found to be substantially the same with respect to all factors bearing on the reasonableness of the rate, and the two classes are shown to be intimately bound together, there is no occasion to deal with the reasonableness of the interstate rates more specifically, or to separate intrastate and interstate costs and revenues. Compare American Express

Co. v. [State of] South Dakota ex rel. Caldwell, 244 U. S. 617, 37 S. Ct. 656, 61 L. Ed. 1352; United States v. [State of] Louisiana, supra [290 U. S. 70, 54 S. Ct. 28, 78 L. Ed. 81]; State of Florida v. United States, supra [292 U. S. 1, 54 S. Ct. 603, 78 L. Ed. 1077].' "

In the instant case the Commission's procedure or method of applying the Ex Parte 175 increases to Utah intrastate rates was the same as that in the *King* case, in the *Arkansas* case, and, for that matter, in all other 13th Section cases in which this Court has sustained the Commission's orders. This was clearly recognized by the District Court in sustaining the order in the instant case (R. 46-48).

Finding 3. Here the Commission finds that present Utah intrastate freight rates, with certain exceptions, "are abnormally low"; that the Utah intrastate traffic "fails to produce its fair share of the earnings required to yield revenue sufficient" to accomplish the purposes of the Interstate Commerce Act; that "the burden thus cast upon interstate commerce is undue in and to the extent that these intrastate rates and charges are less than they would be on the bases herein prescribed" and that the Utah intrastate rates cause and in the future will cause "undue, unreasonable, and unjust discrimination against interstate commerce."

Appellants deny that Utah intrastate rates are abnormally low and insist that, instead, the level of the Utah rates is higher than the level of the interstate rates (App. Br. pp. 25-28). To support their contention appellants have selected and cited a few *individual* intrastate rates that are higher than interstate rates on the same commodities for comparable distances. The

Commission recognized the existence of this exceptional situation as to a few individual rates. For example, its report states (R. 103) that an exhibit of the Utah Coal Operators Association "shows two instances in which the Utah intrastate rates are now on a higher basis, mile for mile, than interstate rates"; with respect to rates on sheep and goats the report cites two instances (R. 112) where the intrastate rates exceed the interstate rates including the Ex Parte 175 increases; and the report refers (R. 113) to one instance where the intrastate rate "is now as high as the interstate rate" on cattle in single-deck cars.

But the Commission carefully guarded against any injustice arising from the application of the increases to these exceptional instances where intrastate rates are as high as or higher than interstate rates by providing (R. 119) in Finding 4—

> "* * * that increases may not be made in intrastate rates to levels higher than the interstate rates on like traffic to or from Utah for like or greater short-line distances over the same lines of railroad, except in instances where the interstate rates, and not the intrastate rates, are designated as published to meet motor-carrier competition."

The order expressly exempts from the increases the intrastate rates on certain specified commodities and provides that Utah intrastate rates shall be established which shall be "no lower" than the approved rates and charges as provided in the report (R. 131-132). Thus, in no instance has the Commission authorized any increase in an intrastate rate which is already as high as the corresponding interstate rate.

As the Commission was dealing with the general level of the Utah intrastate rates and with "the relation of rates to income", *Florida v. United States*, 282 U. S. 194, 214, the isolated instances cited by appellants in which the intrastate rates were as high as or higher than comparable interstate rates are of no significance, particularly since the Commission withheld permission to increase such intrastate rates.

As previously shown, the Commission has felt compelled, under the mandate of Section 13(4) of the Act, to review the relation or disparity between general level of Utah intrastate rates and the general level of interstate rates at frequent intervals since 1920. Following its decision in *Emergency Freight Charges, 1935*, 208 I. C. C. 4, authorizing increases in interstate rates, the Commission reviewed and ordered similar increases in Utah intrastate rates, with certain exceptions, *Emergency Freight Charges Within Utah*, 213 I. C. C. 249. At page 250 of the latter decision, the Commission found—

> "*Prior to April 18, 1935, the intrastate rates within Utah generally were upon the same level as the interstate rates applying to and from that State.* To illustrate the existing disparities respondents compare, for approximately the same distances, the interstate class rates and the interstate rates on such commodities as brick, cement, salt, lime, limerock, plaster, petroleum, fuel oil, and canned or evaporated milk, with lower intrastate class rates and rates on the above commodities applicable within Utah. Generally, the differences in the rates are measured by the amounts of the emergency charges authorized by us. Respondents take the position that since Utah shippers are not required to pay the emergency charges on traffic moving intrastate, such shippers

and the localities in Utah between which shipments may move are unduly preferred and that parties shipping into Utah from points outside that State who are compelled to pay the emergency charges are subjected to unjust discrimination." (Italics added.)

At page 256 of that decision, the Commission further found—

"We find that the transportation of the intrastate traffic under the rates here in issue and of the interstate traffic to and from points in Utah takes place under substantially similar circumstances and conditions; and that the present Utah intrastate traffic is not contributing its just proportion to the revenues of the carriers, and by reason of that fact respondents are suffering substantial losses in revenues to which they are entitled."

The only thing that has happened to alter the relationship between the general level of the interstate and intrastate rates since the Commission found in 1935 that Utah intrastate rates and interstate rates to and from Utah "generally were upon the same level" has been the refusal, in whole or in part, of the Utah commission to permit increases in its intrastate rates following general increases ordered by the Commission in interstate rates. In other words, the level of the Utah intrastate rates has been held down by the Utah commission (see R. 168-174), while the interstate rates to and from Utah have gradually risen to their present level, due to increased railroad wages, costs of materials and supplies used by railroads and other costs generally.

Although in several other instances, upon being confronted with findings after hearings by the Commission

that the Utah rates unduly discriminated against interstate commerce, the Utah commission has finally permitted the Utah rates to be increased, this has not made up for loss of railroad revenue resulting from the denial by the Utah commission of increases in rates where no 13th Section proceedings were instituted by the Commission following its authorization of general increases in interstate rates, such as in Ex Parte No. 123 (see Appendix B), or for the railroads' loss of revenues during the long periods they were prohibited by the Utah commission from increasing the intrastate rates.

In any event, the flat refusal of the Utah commission to permit any increase in its intrastate rates following the Commission's nationwide authorization to increase interstate rates 15% in Ex Parte 175, results directly in the general level of the Utah intrastate rates being 15% lower than the general level of interstate rates found by the Commission to be necessary for the purposes of the Act to provide efficient service and maintain an adequate railroad transportaton system. This, we submit, fully justified the Commission's finding that the Utah rates "are abnormally low" and that the Utah traffic failed "to produce its fair share of the earnings" required to accomplish the purposes of the Act. As previously pointed out, this Court has repeatedly held that income from intrastate rates must play a most important part in maintaining an adequate national railroad transportation system and must pay "a fair proportionate share" of the cost of maintaining such a system. See quotation, ante page 19, from *Florida v. United States*, 282 U. S. 194, 210-211.

The insistence of the Utah commission that the level of intrastate rates be maintained at least 15% lower

generally than the level of interstate rates to and from Utah, under substantially similar transportation conditions, obviously results in an undue burden upon interstate commerce and fully supports and justifies the Commission's finding that the Utah intrastate rates cause, and in the future will cause "undue, unreasonable, and unjust discrimination against interstate commerce."

Applied to individual rates, the unjust discrimination against interstate commerce is sharply illustrated by Exhibit No. 37 (R. 501), which makes the following comparison between Utah intrastate "class" rates for comparable distances with interstate rates—

From	To	Miles	Rate (cents per cwt.)
(Salt Lake City, Utah	Cache Jct., Utah	85	80)
(Pocatello, Idaho	Cache Jct., Utah	85	92)
(Salt Lake City, Utah	Wasatch Utah	101	109)
(Salt Lake City, Utah	Wyuta, Wyo.	107	125)
(Salt Lake City, Utah	Portage, Utah	94	102)
(Salt Lake City, Utah	Woodruff, Ida.	98	125)
(Salt Lake City, Utah	Utida, Utah	99	110)
(Salt Lake City, Utah	Anderson, Ida.	100	137)
(Salt Lake City, Utah	Lewiston, Utah	126	131)
(Salt Lake City, Utah	Franklin, Ida.	128	151)

The unjust discrimination against interstate commerce is further illustrated by Exhibit 45 (R. 524), portraying the result of Utah commission's refusal to permit any increase in intrastate rates on coal. The Commission authorized an increase in interstate coal rates of 12% subject to a maximum of 40 cents per net ton. Exhibit 45 shows that while Utah intrastate rates for comparable distances were previously lower per ton of 2,000 pounds than interstate rates, the disparity be-

tween the intrastate rates and the interstate rates on coal, resulting from the Utah commission's refusal to allow any increase in Utah intrastate rates, has very greatly and burdensomely increased. The resulting disparity between the two sets of rates on coal is shown in the following tabulation taken from Exhibit 45:

From
Castle Gate, Utah

To	Miles	Rate in cents per ton of 2000 lbs.	
(Portage, Utah	209		346
(Woodruff, Idaho	213	346+40¢=	386
(Uvada, Utah	322		555
(Lien, Nevada	326	565+40¢=	605
(Wendover, Utah	237		505
(Pilot, Nevada	254	515+40¢=	555
(Lucin, Utah	254		505
(Tecoma, Nevada	266	515+40¢=	555
(Westwater, Utah	152		308
(Mack, Colo.	161	360+40¢=	400

Iron ore is the most important commodity, from the standpoint of revenues, that moves under Utah intrastate rates. The refusal of the Utah commission to permit the Ex Parte 175 increase to be made in intrastate rates on iron ore resulted in undue discrimination against interstate commerce amounting to $634,680 annually.

No shipper or producer has opposed increasing Utah intrastate rates on iron ore to the level of interstate iron ore rates as increased under Ex Parte 175. (See also R. 448).

With respect to iron ore the Commission found (R. 105)—

> "Iron ore is produced in Utah and shipped to steel mills in the State and in California, Colorado, and at points east of Chicago, Ill. During the year

1953, 57,014 carloads were shipped intrastate from Iron Springs, Desert Mound, and Iron Mountain, Utah, to Geneva and Ironton. In the same period, 17,844 carloads moved to Minnequa, Colo., 2,631 to Fontana, Calif., 1,071 to Long Beach, Calif., and 2,203 to points east of Chicago, or a total of 23,749 carloads interstate. *Competition between steel mills located in California, Utah, and Colorado is very keen, and the nonapplication of the 12-percent increase under Ex Parte No 175 to the intrastate rates in Utah gives a definite and serious advantage to Utah steel mills. The California steel mills, seeking to have the Ex Parte 175 increase removed from their rates on iron ore, have complained to the railroads about the failure to increase the Utah intrastate rates.*" (Italics added.)

From the standpoint of revenue the intrastate transportation of coal in Utah is second to iron ore in importance. The importance of the Utah intrastate coal traffic to the railroads and the very substantial extent of the undue discrimination against interstate commerce in this commodity alone is indicated in the following statement in the Commission's report (R. 100)—

"*Coal*—During May, August, and November, 1953, and February, 1954, there were 11,466 carloads of coal moved intrastate in Utah, compared with 3,551 carloads moved interstate to points in Utah. The total charges collected by the Utah railroads on the 11,466 carloads moved intrastate amounted to $1,636,459, which would have been $1,827,325, or $190,866 more, if the increases sought had been in effect. Expanded to a full year, this indicates that in the 12 months April 1, 1953, to March 31, 1954, the *respondents lost approximately $572,598 in revenue on Utah coal moving intrastate*, because the Utah commission refused to permit the same rate increases authorized in interstate coal

rates in Ex Parte No. 175. The Ex Parte No. 175 increase on coal and coke is 12 percent, subject to a maximum of 40 cents per net ton." (Italics added.)

The tabulation immediately following that statement (R. 101), shows the increasing disparity between the intrastate and the interstate rates resulting from the Utah commission's refusal to permit increases in the Utah intrastate coal rates.

Exhibit 21 (R. 467; reduced almost to obscurity in printing) was introduced to show the distribution of carloads of coal in Utah. Both intrastate and interstate shipments move to each of 17 destinations. At 2 destinations only interstate shipments and at 72 destinations only intrastate shipments were received.

Interstate carloads of coal to Utah destinations moved from points in Arkansas, Colorado, Oklahoma, Pennsylvania, Washington and Wyoming.

The effect of the refusal of the Utah commission to permit raising the level of Utah intrastate coal rates has been to prevent the railroads, because of competition between interstate and Utah intrastate coal, from realizing the 15% increase authorized by the Commission on some interstate coal rates (R. 251).

That the unjust discrimination in the intrastate coal traffic alone is real and substantial is undisputed and clearly appears from the statement quoted above from the Commission's report, showing that in a 12-month period approximately 34,398 carloads of coal moved intrastate in Utah and 10,653 carloads moved interstate. Thus, the unjust discrimination against interstate commerce in coal alone approximated $572,598.00 for that year.

Finding 4. This finding is that the unjust discrimination found by the Commission to exist against interstate commerce should be removed by applying to the Utah intrastate rates on the commodities and traffic described, the same respective increases that the Utah railroads apply and maintain on like interstate traffic to and from Utah under Ex Parte No. 175—

> "* * * provided that increases may not be made in intrastate rates to levels higher than the interstate rates on like traffic to or from Utah for like or greater short-line distances over the same lines of roalroad, except in instances where the interstate rates, and not the intrastate rates, are designated as published to meet motor-carrier competition."

In short, "finding" 4 is merely the Commission's exercise of its duty and discretion under Section 13(4) of the Act to "prescribe the rate * * * to be charged * * * in such manner as, in its judgment, will remove such * * * discrimination" as it has found to exist against interstate commerce. This is "judgment" based, of course, upon transportation conditions and other facts and circumstances surrounding the intrastate and interstate rates. And it is not only logical but necessary to remove the unjust discrimination that the intrastate rates be increased to the level of the interstate rates in view of the Commission's findings upon the evidence (R. 100, and 117-118) that—

> "For the most part, intrastate traffic handled within Utah and interstate traffic to or through points in that State are handled in the same trains by the same crews and other employees, and through the same yards and other facilities. No distinction is made between intrastate and interstate traffic in the loading, unloading, and line-haul movement."
>
> * * * * * *

"The record is convincing that the transportation conditions affecting Utah intrastate traffic differ in no material respect from those affecting interstate traffic to and from that State, and that Utah intrastate traffic is no less able to bear the full increase sought than the interstate traffic. The Ex Parte No. 175 increases were authorized for interstate rail traffic throughout the country based upon the total revenue needs of the railroads generally, and have been made effective on interstate traffic generally as well as on intrastate traffic within most of the States. The railroads' need for additional revenue to meet increased operating expenses was the underlying basis for our decision in that proceeding. Those increased operating costs were not confined to interstate traffic, but were and are incurred also on Utah intrastate traffic.

* * * * *

"The conditions incident to the intrastate transportation of freight in Utah are not more favorable than those incident to the interstate transportation between Utah and adjoining states."

Finding 5. This finding is (R. 119) that:

"The establishment of increases in intrastate rates and charges as prescribed in finding 4 will not result in unreasonable rates, or rates that are unreasonable in relation to interstate rates, and will substantially increase the respondents' annual revenues."

Having found, after long hearings and upon voluminous evidence in Ex Parte 175, that the interstate rates "may be justly and reasonably increased 15 percent" (284 I. C. C. 661), and in the instant case, that "transportation conditions affecting Utah intrastate traffic differ in no material respect from those affecting interstate traffic to and from that State," and that condi-

tions incident to the intrastate transportation of freight in Utah "are not more favorable" than those incident to interstate transportation (R. 117-118), the conclusion was inescapable that to raise the intrastate rates to the same "level" (but no higher than) the interstate rates would "not result in unreasonable rates, or rates that are unreasonable in relation to interstate rates." In the words of this Court in *King v. United States*, 344 U. S. 254, 272:

> "The Commission has applied to the Florida operations the same conclusion it reached as to the need for increased revenue on a national basis and has distributed the burden within Florida along the same lines it followed when estimating the revenues available in the southern territory from intrastate as well as interstate operations. In the absence of any showing that it is not applicable to Florida, the evidence which forms the basis of the Commission's nationwide order becomes the natural basis for its Florida order."

In Ex Parte 175 the interstate rates increased by 15 percent were found reasonable in relation to the railroads' need for income necessary to effectuate the purpose of the Act to provide an adequate national railroad transportation system. Likewise, in changing Utah's "scale of intrastate rates in the interest of the carrier's revenue, the *question is that of the relation of rates to income.*" (Italics added, *Florida v. United States*, 282 U. S. 194, 214.) Having found transportation conditions similar for Utah intrastate traffic as for interstate traffic, for which reasonable rates had been prescribed in Ex Parte 175, it necessarily followed that the level of the Utah rates should be commensurate with the level of the rates found reasonable for interstate traffic.

The further finding that the increases in Utah intrastate rates "will substantially increase the respondents' annual revenues," is based upon the experienced and informed judgment of traffic officers of the Utah railroads, including their personal knowledge of increased revenues resulting from past increases in the Utah intrastate rates. For example, speaking for the Utah railroads concerning coal and other products of mines, Witness Earley testified that while increasing the Utah rates might cause some loss in "domestic" (for heating residences, etc.) coal, but that it was the view of the Utah railroads that "the vast preponderance" of the coal traffic would be retained by the railroads.

There were fundamental reasons why substantial additional revenues could reasonably be expected from the increase in rates on Utah intrastate traffic. Of the total amount, $1,880,347, being lost annually, it was shown that $1,849,097 would be derived from three classes of heavy, bulk traffic; namely, products of mines (principally coal, iron ores and ores and concentrates), $1,532,550; manufactures and miscellaneous $263,868 and animals and products $47,679, leaving only about $30,000 to come from other traffic.

In other words, the traffic that would produce the major portion of the additional railroad revenue is in heavy loading carload commodities moving in bulk and in large volume, which is not adaptable to diversion to trucks or other means of transportation (R. 254). The Commission considered this fundamental fact, noting (R. 117) that 80 percent of the total additional revenue sought from Utah intrastate traffic would come from products of mines.

Finding 6. This finding is that the increased revenues resulting from the increased rates "are required from intrastate traffic in Utah in order to enable the respondents to provide adequate and efficient railway transportation service." This finding logically and necessarily follows its "natural basis" found in Ex Parte 175, *King v. United States,* 344 U. S. 254, 272, for, as said by the Commission (R. 117)—

> "* * * [t]he Ex Parte No. 175 increases were authorized for interstate rail traffic throughout the country based upon the total revenue needs of the railroads generally, and have been made effective on interstate traffic generally as well as on intrastate traffic within most of the States. The railroads' need for additional revenue to meet increased operating expenses was the underlying basis for our decision in that proceeding. Those increased operating costs were not confined to interstate traffic, but were and are incurred also on Utah intrastate traffic."

The Commission's finding that additional revenue from Utah intrastate traffic was required to enable the railroads to provide adequate and efficient services is fully supported by the testimony of Witness Kroll, showing that the gross property investment of the five Class I railroads which serve Utah in road and equipment used in transportation service, plus cash and material and supplies, was $2,886,823,152 in 1948 and ranged from $2,987,791,493 in 1949 to $3,538,000,304 in 1953; and that the net property investment averaged as of the beginning and end of the year was $2,377,643,947 in 1948, and ranged from $2,417,049,082 in 1949 to $2,842,418,112 in 1953; that the percentage of return on net investment of the Utah railroads was 3.98% in 1948, 2.58% in 1949, 4.33% in 1950, 3.66% in 1951, 3.91% in

1952 and 3.82% in 1953 (Exhibit 2, page 1; R. 147). The evidence of this witness also showed that there had been a serious drop in net railway operating income of $6,476,206 in the first quarter of 1954 as compared to the same period in 1953, reflecting a reduction of almost 28% under that for the same period in 1953 (Exhibit 2, page 2; R. 149).

The record also shows that in 1952 the revenue per ton-mile of the railroads in the United States was 1.43 cents; in the Western District 1.393 cents; in the Mountain-Pacific States (including Utah) 1.398 cents; but *in the State of Utah the revenue was only 1.258 cents per ton-mile.*

With the railroads in Utah earning less than 4% on their net investment, it is quite evident, as found by the Commission, that they required the increased revenues to enable them to provide adequate and efficient railway transportation service.

Finding 7. This "finding" merely points out that in a few isolated instances Utah intrastate rates were already as high as the interstate rates, exempts such intrastate rates from the increases and preserves the customary "savings clause" (R. 119-120) that—

> "The foregoing findings relate to Utah intrastate rates generally ,and are without prejudice to reexamination, upon complaint or otherwise, as to the lawfulness of any individual Utah intrastate rate on any particular commodity."

To this date, neither the appellants nor any Utah shippers have availed themselves of the continuing opportunity extended by this "savings clause" for reex-

amination of the "lawfulness of any individual Utah intrastate rate." See *Wisconsin R. R. Comm. v. C., B. & Q. R. R. Co.*, 257 U. S. 563, at page 590-591; and *Florida v. United States*, 292 U. S. 1, at page 13.

II. APPELLANTS' QUESTION "(2)" IS SUPERFLUOUS, AND EMBRACES ERRONEOUS AND FALLACIOUS ASSUMPTIONS.

Appellants' statement of questions presented, both in their Jurisdictional Statement and in their brief, is confused and confusing. Their first question is whether the Commission's findings are supported by substantial evidence. Clearly, the Court's answer to that question, whether affirmative or negative, will resolve all aspects of the question whether the evidence is substantial and sufficient to suport the Commission's findings and order. Nevertheless, appellants state their second question as follows:

> "(2) May the court sustain the Interstate Commerce Commission's Order, without further evidence on the following:
>
> (a) The presumption that interstate and intrastate rates were in proper relationship prior to the increase;
>
> (b) The matter of common knowledge that intrastate and interstate traffic are intermingled on the same trains."

If the Court's answer to appellants' first question is in the affirmative, there will be no room for further inquiry concerning the substantiality and sufficiency of the evidence. If the Court's answer to appellants' first question is in the negative then obviously the Commission's order would be void and no further inquiry concerning any of appellants' other contentions would be necessary.

Argument in appellants' brief does not follow the pattern or outline of their questions as stated, but, as they seem to place emphasis and reliance upon discussions of subtopics "(a)" and "(b)" under their question "(2)", it is appropriate to analyze and point to the errors and fallacies implicit in those two subtopics.

Appellants' question "(2)(a)" is premised upon the proposition that, as a prerequisite to its order increasing the Utah intrastate rates, the Commission was required to make a determination or finding upon evidence that the interstate rates and the intrastate rates are not "in proper relationship."

But this misconceives the nature of the Commission's duty and of its function under Section 13(4) of the Act. There is no requirement in that statutory provision that the Commission first determine whether the interstate and intrastate rates are "in proper relationship" from the standpoint of their "reasonableness" as charges for transportation services performed under the respective sets of rates. The only determination required by the statute bearing upon the relationship between the interstate rates, which the Commission had found reasonable in Ex Parte 175, and intrastate rates is the finding that the intrastate rates cause either (a) undue advantage, preference or prejudice as between persons or localities in intrastate commerce against those in interstate commerce, or (b) undue or unjust discrimination against interstate commerce. The Commission made the latter finding in the instant case and it is upon that finding that the order rests, for the Commission held at page 104 of its report (R. 117) that the evidence was not sufficient to suport a statewide finding that the Utah intrastate rates caused undue preference and prejudice as between

persons and localities in interstate commerce, on the one hand, and in intrastate commerce on the other.

In *Florida v. United States*, 282 U. S. 194, this Court said at page 211:

> "As intrastate rates and the income from them must play a most important part in maintaining such a system, the effective operation of the Act requires that intrastate traffic should pay 'a fair proportionate share' of the cost of maintenance. And if there is interference with the accomplishment of the purpose of the Congress because of a disparity of intrastate rates as compared with interstate rates, the Commission is authorized to end the disparity by directly removing it. *Railroad Commission of Wisconsin v. Chicago, Burlington & Quincy Railroad Company, supra; New York v. United States, supra* (pp. 585, 586)."

In that case, this Court pointed out at page 214 that authority to determine "the reasonableness *per se* of intrastate rates lay with the state authorities" and not with the Interstate Commerce Commission; that in dealing with unjust discrimination as between persons and localities in relation to interstate commerce, "the question is one of the relation of rates to each other," but that—

> "* * * [i]n considering the authority of the Commission to enter the state field and to change a scale of intrastate rates in the interest of the carrier's revenue, the question is that of the *relation of rates to income.*" (Italics added.)

In *United States v. Louisiana*, 290 U. S. 70, the Court held at page 79—

> "* * * [i]t sufficed that the Commission found that Louisiana showed nothing in the circumstances of its agriculture and industry or its traffic conditions so different from the rest of the country as to lead to

> the conclusion that the intrastate rates, raised to the reasonable general interstate level, would not themselves be reasonable; and that *it saved the rights of interested parties to test the reasonableness of any individual rate.*"

In finding in the instant case that, to remove the undue discrimination against interstate commerce the Utah intrastate rates should be increased to the level of the interstate rates the Commission finds that in certain instances the Utah intrastate rates "are now as high" as corresponding interstate rates, and it expressly provided (R. 119)—

> "* * * that increases may not be made in intrastate rates to levels higher than the interstate rates on like traffic to or from Utah for like or greater short-line distances over the same lines of railroad, except in instances where the interstate rates, and not the intrastate rates, are designated as published to meet motor-carrier competition."

In its finding "7" (R. 119), and in its order (R. 131), the Commission expressly excepted from the required increases the intrastate rates on a number of specified commodities.

Finally, the Commission here, as in *United States v. Louisiana,, supra,* and *Florida v. United States,* 292 U. S. 1, 13, "saved" the rights of appellants and other interested parties to test the reasonableness of any individual intrastate rate by expressly stating (R. 120) that its findings relate to Utah intrastate rates generally and—

> "* * * are without prejudice to reexamination upon complaint or otherwise, as to the lawfulness of any individual Utah intrastate rate on any particular commodity."

The Commission thus left appellants and other interested parties free, as it did in the *Florida* case just cited, to apply for modification of its order as to any specified intrastate rate on the ground that "it is not related to interstate rates in such a way as to contravene the provisions of the Interstate Commerce Act." Appellants have not availed themselves of that expressly reserved right, nor has any Utah intrastate shipper.

We submit that appellants may not be heard in the instant case to contend that any of the Utah intrastate rates are "unreasonable" or upon an unreasonably high level in relation to interstate rates. The question here is the "relation of rates to income," and *not* the "relation of rates to each other," *Florida v. United States*, 282 U. S. 194, 214.

Moreover, in one of its numerous decisions holding that Utah intrastate rates unduly discriminated against interstate commerce in violation of Section 13(4) of the Act, the Commission found in *Emergency Freight Charges Within Utah*, 213 I. C. C. 249, at page 250 that:

> "Prior to April 18, 1935 the intrastate rates within Utah generally were upon the same level as the interstate rates applying to and from that State."

So far as the record in the present case shows, the only change that has taken place in "the same level" then existing between the interstate rates and Utah intrastate rates has been the result of the Utah commission's refusal to authorize increases in intrastate rates commensurate with the several increases in interstate rates authorized by the Commission since its decision (December 9, 1935) in the case just quoted. (See history

of general increases authorized by the Commission, showing the refusal of the Utah commission to authorize similar increases [R. 434-442]; also recitals in the Commission's report in *Utah Intrastate Freight Rates and Charges*, 287 I. C. C. 315, at pages 317-320, describing the continued refusal of the Utah commission to permit intrastate rates in that state to be increased and maintained on "the same level" of interstate rates as increased in the several general increases authorized by the Commission.)

Thus, the "substantial disparity" between the interstate rates and the Utah intrastate rates which causes the unjust discrimination found by the Commission against interstate commerce in the instant case is the direct result of the Utah commission's refusal to permit "the same level" between the two sets of rates which existed prior to 1935, and its insistence upon maintaining Utah intrastate rates at a lower "level" than that which the Commission has found necessary for interstate rates in order to produce sufficient revenue to enable the railroads to provide an adequate and efficient national railroad transportation system. In *Illinois Commerce Comm'n v. U. S.*, 292 U. S. 474, at page 485, this Court held—

> "* * * [t]he effect of maintaining a lower rate, intrastate, than the reasonable interstate rate *is necessarily discriminatory* wherever the two classes of traffic, inextricably intermingled, are carried on, as in the District, under substantially the same conditions." (Italics added.)

Furthermore, until the instant case, the Utah commission has finally permitted (without an order of the Interstate Commerce Commission) increases in most of

its intrastate rates following each of the several Section 13 proceedings and findings by the Interstate Commerce Commission that the Utah rates unduly discriminated against interstate commerce. In so doing, the Utah commission has expressly given its approval to the increased intrastate rates and thus the intrastate rates were "made or imposed" by Utah state authority, *Florida v. United States*, 282 U. S. 194, 210.

It has long been settled that intrastate rates existing under or pursuant to state laws, whether prescribed or merely permitted to become effective, are presumed to be reasonable. *Chicago, Milwaukee, &c. R'y v. Tompkins*, 176 U. S. 167, 173 (rates made by South Dakota legislature); *Minneapolis and St. Louis R'd Co. v. Minnesota*, 186 U. S. 257, 264 (rates made by the Minnesota commission). In the latter case, this Court said at page 264, "[t]he presumption is that the rates fixed by the Commission are reasonable."

Appellants' question "(2)(b)" is whether the Court may sustain the Commission's order without further evidence on "[t]he matter of common knowledge that intrastate and interstate traffic are intermingled on the same trains." This concerns the sufficiency of the evidence on which Finding "1" is based.

We have set forth at some length the testimony of Witnesses Bradford and Jensen which amply supports that finding, ante pp. 37-43, and there pointed out that the positive testimony of these two long experienced railroad operating witnesses was not and is not disputed or contradicted by appellants or any other party of record. Indeed, appellants admit at pages 8-9 of their Jurisdictional Statement that this evidence establishes

"that the railroads handled interstate and intrastate freight in the same manner without distinction," but they immediately assert—

> "* * * [t]his, however, was not a matter that required any evidence. It is a matter of common knowledge to anyone who has the least knowledge about railroad operations. It is a matter which the Commission and the courts should and have taken judicial notice. To rely entirely on such state of facts to establish that 'all factors bearing on the reasonableness of the rate' are the same, ignores the all important element of density of traffic."

In other words, seeking a premise or basis for attacking the Commission's order, appellants baldly and falsely assert that what they admit to be established by the undisputed evidence of two experienced witnesses is "common knowledge." From this wholly false premise they next argue that the order is based not upon evidence but upon "common knowledge," and in this way they arrive at their conclusion that there is no evidence to support the Commission's finding "1" and that, therefore, the order is void. We submit that such completely irrational and fallacious process of attempting to destroy or evade the undisputed evidential basis for finding "1" and, thus, to establish a premise for attacking the Commission's order, must be summarily rejected. Whether intrastate and interstate traffic is intermingled and handled in the same trains without distinction by the railroads in Utah plainly is a question of fact to be established by evidence. That has been done in this case, as appellants have admitted, and the evidence admittedly establishing such facts may not be nullified or destroyed by appellants' bare assertion that the facts so established are matters of "common knowledge."

Having developed their false premise that the Commission's finding "1" is based upon "common knowledge", appellants then attack it by asserting that to rely upon "such state of facts" to establish that "'all factors bearing on the reasonableness of the rate' are the same, ignores the all important element of density of traffic."

In their Jurisdictional Statement, page 8, appellants quote from this Court's decision in *Illinois Commerce Comm'n v. U. S.*, 292 U. S. 474, at pages 483-484—

> "* * * [w]here the conditions under which interstate and intrastate traffic move are found to be substantially the same with respect to all factors bearing on the reasonableness of the rate and the two classes are shown to be intimately bound together, there is no occasion to deal with the reasonableness of the intrastate rates more specifically, or to separate intrastate and interstate costs and revenues. Compare *American Express Co. v. Caldwell*, 244 U. S. 617; *United States v. Louisiana, supra; Florida v. United States*, ante, p. 1."

Following that quotation appellants say—

> "The question here presented for determination is—What is meant by the term 'with respect to all factors bearing on the reasonableness of the rate'?"

Again, at page 13 of their Jurisdictional Statement, appellants say that to sustain the order increasing Utah intrastate rates the evidence must be sufficient to enable the Commission to find—

> "That all factors bearing upon the reasonableness of the rates are substantially the same as affecting interstate and intrastate rates."

Finally, at page 15 of their Jurisdictional Statement, appellants say that the duty is upon the appellees to

point out evidence of record showing "that all factors touching the reasonableness of rates are the same."

Confusing and incomprehensible as it is, we presume appellants' contention to be that before the Commission can order an increase in intrastate rates for revenue purposes and to remove undue discrimination against interstate commerce, it must have before it evidence showing that "all factors touching the reasonableness of the rates" are the same; that evidence admittedly justifying the following findings of the Commission is deficient in that it is not shown that such evidence covers "all factors", including "density of traffic", which have any bearing upon the "reasonableness" of the Utah intrastate rates—

> "For the most part, intrastate traffic handled within Utah and interstate traffic to or through points in that State are handled in the same trains by the same crews and other employees, and through the same yards and other facilities. No distinction is made between intrastate and interstate traffic in the loading, unloading, and line-haul movement." (R. 100.)

> "1. The conditions incident to the intrastate transportation of freight in Utah are not more favorable than those incident to the interstate transportation between Utah and adjoining States." (R. 118.)

But, as we have already shown (ante, pp. 63-65), appellants' fundamental error lies in their approach to and misconception of the Commission's function in dealing with intrastate rates under Section 13(4) of the Act. They seem to labor under the belief that before the Commission can order an increase in intrastate rates it must find each of such rates to be "reasonable." On the con-

trary, as pointed out by this Court in *United States v. Louisiana*, 290 U. S. 70, at pages 78-79—

"§13(4) does not in terms require the Commission to find that the intrastate rates which it prescribes are reasonable * * *"

"* * * the appellees insist that the order is defective because, in conforming the intrastate rates to the reasonable level of interstate rates, the Commission did not find specifically that in each case the rate as increased would be just and reasonable. But we think that the relationship of the section to §15a(2), already described, is such that the standard of reasonableness prescribed by the latter is that necessarily set up for § 13(4) which supplements it. * * * The administrative difficulties which would preclude performance of the duty imposed by §15a if the Commission were required to find that each individual rate prescribed is just and reasonable, would similarly prevent compliance with that under §13(4). * * * It sufficed that the Commission found that Louisiana showed nothing in the circumstances of its agriculture and industry or its traffic conditions so different from the rest of the country as to lead to the conclusion that the intrastate rates, raised to the reasonable general interstate level, would not themselves be reasonable; and that it saved the rights of interested parties to test the reasonableness of any individual rate.

In *Georgia Comm. v. United States*, 283 U. S. 765, this Court said at page 770—

"* * * [i]t is true that when state rates are assailed on the ground that they result in undue prejudice to interstate shippers or discriminate against interstate commerce, the Commission must determine whether the existing interstate rates are reasonable, as it may not require intrastate rates to be raised above a reasonable level. State Corporation

Comm. v. Aberdeen & Rockfish R. Co., 136 I. C. C. 173, 180. But the reasonableness of the interstate rates had already been found when they were established in the earlier stage of the proceedings; and at those hearings the Georgia Commission and the Highway Board were represented."

In the instant case, as in the *Georgia* case, the Commission had previously found in Ex Parte 175 that the interstate rates as there authorized to be increased were reasonable rates (284 I. C. C. 589, 661) and, again, in the instant case (297 I. C. C. 87, 105, R. 118) it found that—

"The amounts and percentages by which interstate freight rates and charges between points in Utah and points in other states were increased, as authorized in Ex Parte No. 175 are just and reasonable."

Having made the essential findings that the interstate rates as increased under Ex Parte 175 were reasonable for the purpose of providing additional revenue needed by the railroads for the purpose of the Act; that Utah intrastate rates were abnormally low and had not been increased to the level of the interstate rates found reasonable in Ex Parte 175; and the further finding, which appellants admit the evidence supports, that interstate and intrastate traffic in Utah are handled in the same trains, over the same rails, by the same crews, etc., it follows, as further found by the Commission, that conditions incident to intrastate transportation of freight in Utah "are not more favorable" than those incident to interstate transportation between Utah and adjoining states. From that series of findings upon evidence the ultimate conclusion that the Utah intrastate rates unduly burden and result in unjust discrimination against interstate commerce necessarily follows. As stated by

this Court in *Illinois Commerce Comm'n v. U. S.*, 292 U. S. 474, at page 485—

> "The effect of maintaining a lower rate, intrastate, than the reasonable interstate rate is necessarily discriminatory wherever the two classes of traffic, inextricably intermingled, are carried on, as in the District, under substantially the same conditions."

Appellants do not undertake to answer their own question as to what is meant by the words "all factors bearing on the reasonableness of the rate" as used by this Court in the *Illinois* case, *supra*. They seem to contend that the quoted words require evidence bearing upon each and every "factor" that could have any bearing upon the "reasonableness of the rate" and that since "density of traffic" has such bearing, the order in this case is void unless appellees can point out testimony of the railroads specifically showing that the density of traffic in Utah was less or no greater than the density of traffic elsewhere over the systems of the appellee railroads.

As we have already shown, the Commission's power over intrastate rates under Section 13(4), involves the question of the "relation of rates to income", and as held by this Court the Commission is not required in such cases to determine the "reasonableness" of the intrastate rates it orders to be increased (ante, pp. 63-65). However, to demonstrate the absurdity of such a rigid rule as appellants here insist upon, we remind the Court that there is a multitude of "factors" which have a bearing upon the reasonableness of rates. For example, in *Interstate Commerce Acts Annotated* (1929), Vol. 1, at pages 308-312, there are listed under the heading, "Gen-

eral Considerations as to Reasonableness and Justness of Charges," 659 "factors" having a bearing upon the reasonableness of rates in particular cases. Under "tests of reasonableness," there are listed 25 "factors" that have been given consideration by the Commission in adjudicating the reasonableness of rates in particular cases.

Some cases may present or involve very few, while other cases may involve many of these "factors" or "tests" bearing upon the reasonableness of rates. But since no two cases are identical and each case must be adjudicated upon its own facts, and no two cases involve the same "factors" or the same number of "factors" concerning the reasonableness of the rates, it is obvious that appellants have misunderstood the language quoted from this Court's decision in *Illinois Commerce Comm'n v. U. S., supra.* If the Commission must, as appellants suggest, have evidence before it and give consideration to all of the multitude of "factors" which it has heretofore found to have a bearing upon the reasonableness of rates in one or another of the literally thousands of cases decided by it, then it would clearly be impossible to present a case to the Commission for adjudication of the reasonableness of rates, for in no case would all of the multitude of "factors" be present, *United States v. Louisiana, supra,* 78-79.

While "density of traffic" does have a bearing in cases wherein the Commission is called upon to determine the "reasonableness" of a rate, which it is not here called upon to do, there is no provision in the Interstate Commerce Act nor any suggestion in any decision of any court or tribunal to the effect that the Commission cannot determine the reasonableness of a rate or order the

level of intrastate rates increased under Section 13(4) of the Act in the absence of evidence and a specific finding concerning the "density of traffic." Nor would the absence of evidence concerning "density of traffic", even in a case in which the Commission is called upon to determine the reasonableness of a rate, prevent the Commission from making such a determination, for "density of traffic" is only one out of the multitude of factors having a bearing upon the reasonableness of a rate, and with adequate evidence of other factors from which the Commission could make its determination, clearly its functions are not to be paralyzed merely because evidence bearing on one of the multitude of relevant factors is not present in a particular case.

III. THE COMMISSION DID NOT IGNORE EVIDENCE OF APPELLANTS OR OTHER PROTESTANTS; INSTEAD, AS SHOWN BY ITS REPORT, IT ANALYZED THEIR EVIDENCE AND FOUND IT DEFICIENT AND LACKING IN PROBATIVE FORCE.

Appellants' statement that the Commission *ignored* their testimony is not true, as we now demonstrate from the Commission's report.

1. The Utah commission contended that the 15.98 percent rate of return of the 37-mile Bamberger Railroad operating between Ogden and Salt Lake City, Utah, proved that all Utah railroads were faring well financially. The Commission rejected this as a ground for denying the increase in Utah intrastate rates, saying (R. 99-100)—

> "* * * [o]n brief, the Utah commission argues that the Bamberger's rate of return is a clear indication that carriers operating in Utah are faring well financially and that the comparatively low 3.82-percent return in 1953 of the five class I systems should not be attributed to the lack of the Ex Parte No.

175 increases on their Utah intrastate traffic. The Bamberger has no passenger operations,and it is the only railroad serving Hill Air Force Base. The seeming prosperity of the Bamberger does not prove that the other lines operating in Utah do not require additional revenue."

The Commission had rejected similar reasoning and contentions in Ex Parte 175, where it said (284 I. C. C. 610)—

"None of the deficit lines indicated, and none (other than certain conspicuous industry-affiliated lines) with earnings exceeding an 8-percent rate, are or have been important factors in controlling the general region- or country-wide basis of freight rates. We have long recognized—as did Congress in the Transportation Act of 1920, sec. 422—that even with a reasonable general basis of rates there must be some railroads that would have high, and some low, rates of return or none at all, and that in the interest of the commerce of the country neither the success of the most prosperous nor the unfortunate plight of the least favorably circumstanced lines could control in our determination of a wide basis of reasonable rates for application on lines of high, low, and average earning capacity. These roads perforce all must compete with each other for a large portion of the common body of available traffic, which must be carried at a common rate basis if the lines compete effectually. The great body of traffic is carried neither by the high earning nor low earning or deficit roads."

2. Analyzing and appraising evidence and contentions of the Utah Coal Operators Association, the Commission said (R. 102-103; 103-104)—

"The Utah Coal Operators Association is a nonprofit association representing the producers of

coal in the State. The association members produce more than 80 percent of the commercial coal mined in Utah. It opposes the application of the Ex Parte 175 increase. An exhibit filed by this association compares Utah intrastate rates with intrastate rates on coal in Montana, Wyoming, New Mexico, and Washington. *Such comparisons afford no adequate basis for a determination of the lawfulness, under section 13 of the Act, of the Utah intrastate rates.* In addition, the exhibit shows two instances in which the Utah intrastate rates are now on a higher basis, mile for mile, than interstate rates, the distances being fairly comparable:" (Italics added.)

* * * * * *

"The coal association also shows the following relation between rates on slack coal:

"From	To	Distance Miles	Rate	Ton-mile earnings Mills	Interstate Ex Parte No. 175 increase
Castle Gate, Utah	Ogden, Utah	152	$2.33	15.3	$2.61
Rock Springs, Wyo.	do	191	2.61	13.6	2.61
Castle Gate, Utah	Bushnell, Utah	171	2.59	15.1	2.90
Rock Springs, Wyo.	do	210	2.90	13.8	2.90

"Coal rates generally apply from groups, and *the foregoing comparisons are not representative of the group adjustment.* The Rock Springs-Kemmerer group in Wyoming is approximately 100 miles wide and the Castle Gate group in Utah is about 35 miles in extent. The rates from these two producing groups may reasonably be equalized to Ogden and to Bushnell, respectively.

"Evidence was also presented on behalf of the coal association to show that an increase in the intrastate rates on coal will result in an increased movement of this commodity by truck and in an increased use in Utah of natural gas and other fuels, with the result that the respondents' revenue from coal would be diminished, rather than increased.

We have given consideration to this evidence and are not convinced that the resultant traffic loss will result in decreased revenue on coal." (Italics added.)

3. Concerning efforts of Utah Citizens Rate Association (one of appellants here) to prove that Utah intrastate rates on iron and steel articles did not unduly discriminate against interstate commerce by comparing those Utah rates (*not* with interstate rates from and to Utah but) with *intrastate* rates on the same articles moving in California, the Commission said (R. 106)—

"On behalf of the Utah Citizens Rate Association, it is shown that from Kaiser, Calif., to Los Angeles, Calif., 46 miles, the rate on iron and steel bars, plates, shapes, and sheets is $1.96 a net ton, minimum 80,000 pounds including the Ex Parte No. 175 increase. From Pittsburg to San Francisco, Calif., 50 miles, the rates on the same articles are $2.76 a net ton, minimum 30,000 pounds, and $1.96, minimum 60,000 pounds, including the Ex Parte No. 175 increases. These rates are compared with rates on the same articles from Geneva to Salt Lake City, 38 miles, of $3.30 a net ton, minimum 40,000 pounds, and $3.11, minimum 80,000 pounds, not subject to the Ex Parte No. 175 increase. *The circumstances which motivated the establishment of the California intrastate rates are not revealed, and thus they bear slight relevance to the issue regarding the lawfulness of rates within Utah.*" (Italics added.)

4. With respect to evidence opposing further increases in Utah intrastate rates on ores and concentrates, the Commission said (R. 107-108)—

"The Utah Mining Association opposes any further increases in the Utah intrastate rates on ores and concentrates. Increases in supply, labor, ore-treatment, and transportation costs, and the volume

of imports in recent years, have created unfavorable economic conditions in the lead-zinc mining industry. The addition of the Ex Parte No. 175 increases to rates on the industry's intrastate traffic, the association urges, would add to the burdens at present being borne, serve to further restrict production, employment, profits, and exploration, and have the net effect of decreasing freight revenue from products of mines. The following table shows the number of lead-zinc mines operating in Utah during the years shown, classified by production tonnage:

Period	Total	Small 1-1,000 tons	Medium 1,000-10,000 tons	Large Above 10,000 tons
Year 1946.....	46	31	7	8
Year 1948.....	74	56	12	6
Year 1950.....	52	40	7	5
Year 1952.....	31	22	3	6
Year 1953.....	12	8	0	4

"*The association admits that the traffic in concentrates and metal in Utah and in the Western States generally moves principally in interstate commerce and now bears the Ex Parte 175 increases,* but it calls attention to the fact that any ore production lost through the intrastate application of Ex Parte No. 175 increases would also reduce the interstate movement of concentrates and metals." (Italics added.)

One cement company with a plant in Utah opposed and another cement company with a plant at Laramie, Wyo., supported the increases in Utah intrastate rates. Analyzing the evidence and discussing the situations of these two opposing shippers, the Commission said (R. 110-111)—

"There are two cement plants in Utah, one operated by the Ideal Cement Company at Devil's Slide, and the other by a competing producer at Salt Lake City. In 1948, a new mill was completed at Devil's Slide, which increased the annual production

capacity at that point from 700,000 to 2,200,000 barrels. The Ideal Cement Company has a warehouse or terminal at Salt Lake City. Distribution from this warehouse or terminal is wholly by truck to points in Utah and other States. The rates on cement, minimum 40,000 pounds, from Devil's Slide to Ogden, 32 miles, and Salt Lake City, 68 miles, are 8.5 cents and 12 cents, respectively. In order to meet truck competition, the railroads established rates, minimum 100,000 pounds, of 5 cents to Ogden and 6 cents to Salt Lake City, effective January 12, 1954, limited to expire on December 31, 1954, unless changed or extended.

"The Monolith Portland Midwest Company operates a cement plant at Laramie, 57 miles west of Cheyenne, Wyo., and 483 miles east of Ogden. From 1937 to 1945, this company shipped annually from Laramie to points in Utah an average of 1,640 tons (8,610 barrels) of cement, equivalent to 820 carloads of 40,000 pounds each. It has not shipped cement into Utah since 1948. The Monolith Company contends that the Utah intrastate rates on cement are unduly prejudicial to its plant at Laramie and give undue advantage to the cement mill at Devil's Slide. On June 30, 1946, the rates, minimum 40,000 pounds, to Salt Lake City were 34 cents from Laramie and 8 cents from Devil's Slide, making a rate difference of 26 cents. At present, the respective rates, minimum 40,000 pounds, are 55.2 cents and 12 cents, making a rate difference of 43.2 cents. This difference would be reduced by 1.8 cents to 41.4 cents if the 15-percent increase under Ex Parte No. 175 were applied to the intrastate rate from Devil's Slide to Salt Lake City. Special kinds of cement move for longer distances than from Laramie to Salt Lake City.

"It is urged on behalf of the Ideal Cement Company that an increase in intrastate rates on

cement from Devil's Slide will result in substantial diversion to motortrucks of the cement traffic presently moving by rail. *We are convinced on the record before us that the increases sought by respondents on cement will result in substantially increasing their revenue on this commodity, even though some of this traffic may be diverted to competing forms of transportation.*" (Italics added.)

5. After setting forth a tabulation (R. 113) comparing class and merchandise rates for comparable hauls to interstate and intrastate destinations, the Commission analyzed and discussed opposition testimony, as follows (R. 114)—

"The Utah Citizens Rate Association compares certain less-than-carload rates on specified commodities including paint, refrigerators, radio sets, drugs, hardware, and canned goods, from Salt Lake City to points in Utah with the merchandise rates on those commodities to points in Idaho and Wyoming for comparable hauls. Typical comparisons are listed below:

Commodity	From Salt Lake City to—	Distance Miles	L.c.l. rate Cents
Paint	Delta, Utah	135	93
Do	Pocatello, Idaho	170	90
Refrigerators	Thompson, Utah	217	220
Do	Rock Springs, Wyo	227	141
Radio Sets	Price, Utah	126	140
Do	Pocatello, Idaho	170	90
Drugs	Thompson, Utah	217	220
Do	Idaho Falls, Idaho	221	177

"Most points in Utah do not have merchandise rates due to the fact that motor competition is a compelling factor only in the northern part of the State. *The foregoing interstate merchandise rates do not reflect the full Ex Parte No. 175 increase because of truck-compelled reductions; no similar truck competition affects the intrastate rates shown, and*

the comparisons made are of unlike things." (Italics added.)

6. Under the heading, "*Evidence by the Utah commission,*" the Commission devotes two full pages to evidence introduced by the Utah commission (R. 114-117).

As stated by the Commission (R. 114-115), the Utah commission contended that certain factors affecting costs of the railroads handling Utah intrastate traffic were more favorable than corresponding systemwide factors. Concerning this evidence, the Commission said (R. 114-115)—

> "*Evidence by the Utah commission.*—Based on annual reports filed by four of the principal respondents with the Utah commission, it appears that the interstate freight-service *operating ratio* (freight-service expense divided by freight-service revenue) and the *intrastate density* (ton-miles per mile of main-line track) are as to each respondent more favorable than corresponding systemwide figures for 1953, as shown below:

1953	Intrastate	System
Denver & Rio Grande Western		
Freight operating ratio, percent	56.66	57.72
Density[1]	4,303,760	2,526,252
Southern Pacific		
Freight operating ratio, percent	46.71	66.00
Density[1]	12,703,072	3,798,280
Union Pacific		
Freight operating ratio, percent	55.23	62.17
Density[1]	5,148,461	3,474,790
Western Pacific		
Freight operating ratio, percent	51.72	61.38
Density[1]	3,745,726	3,408,515

1 Ton-miles per mile of main-line track.

"In preparing its annual report to the Utah commission, the Union Pacific follows certain rules, recommended by a convention resolution of the National Association of Railway Commissioners, for the determination of revenues and expenses allocable to each State. *The Union Pacific and the other respondents dispute the validity of the results obtained from the application of the formula. They assert that the reports do not reflect the actual cost of operation in Utah and therefore afford no basis for comparing operating costs. One of the principal objections to the density figures above shown is that they were obtained by using only the miles of main track. The density results would be substantially reduced if branch-line mileage were included. The comparisons thus made are of little significance in our determination here. A more important consideration is the positive showing made upon this record that the average unit expense of servicing Utah intrastate traffic is at least as great as that of servicing interstate traffic to and from Utah.*" (Italics added.)

As pointed out by the Commission in the language just quoted, both the "operating ratio" and the "density" figures were taken from the annual report of the railroads to the Utah commission, which *requires* that the reports be submitted in accordance with an arbitrary formula prescribed by the Utah commission "for the determination of revenues and expenses allocable to each State" through which the reporting railroad operates. The Utah railroads object to this arbitrary formula prescribed by the Utah commission as producing erroneous and misleading data. In submitting the data broken down as required by the Utah commission, the Union Pacific inserts the following statement and objection in each annual report to the Utah commission:—

"The company certifies to the correctness of the figures reported herein, *ascertained according to the formula as prescribed,* but in so doing it is not to be understood as admitting or approving the correctness of the formula, which does not in fact afford a basis for comparing operating costs in the different states, nor does the report reflect the actual cost of operation in the State of Utah." (R. 295; Italics added.)

Among the fatal deficiencies in the data submitted by the Utah commission (Exhibit 64, R. 548) is the fact that the so-called "operating ratios" shown disregard passenger revenues and expenses of the four railroads shown in the exhibit and reflect only freight revenues and expenses, so that the main objective of that evidence fails because it does not include revenues and expenses covering passenger service and losses incident thereto. See *King v. United States, supra,* pp. 260-267.

The so-called Utah traffic "density" figures are false because they divide the tonnage by the number of miles of *main line track* only, disregarding branch line mileage in Utah which, as stated by the Commission, makes the comparison "of little significance in our determination here". For example, the main line mileage of the Union Pacific in Utah is 452½ miles, while the branch line mileage in that State is 225½ miles, or about 50% of the total mileage of that company in Utah (R. 245). The Denver and Rio Grande also has considerable branch line mileage in Utah on which the traffic density is smaller than on the main line of that road (R. 320-321).

It is no answer to argue, as appellants do (Br. 31) that its operating ratio and density figures are valid because they disregard branch line mileage not only in

Utah but also throughout the systems of the four Utah roads. The record contains no evidence whatever to justify appellants' statement that main line and branch line mileage of the four roads are in approximately the same proportions in Utah and over their entire systems.

Among the defects which make the results produced by the controversial Utah formula misleading and incorrect is that it requires that Utah be credited with all transportation revenues derived from its intrastate traffic and in addition thereto revenues from interstate traffic are required to be apportioned to Utah on the basis of the mileage traversed in Utah by individual shipments or individual passengers. Revenues from sources other than transportation are required to be apportioned to Utah on the basis of the railroad mileage in that State compared to the total system miles. Operating expenses as required to be reported by the Utah commission represent the portion of the total operating expenses of the railroad resulting from apportionment on the basis of train mileage in Utah. Express revenue is required to be apportioned to Utah on the basis of express car-miles in Utah. Revenues from hauling United States mail are likewise required to be apportioned to Utah on a mileage basis (R. 305-307).

From the foregoing it is obvious that the intrastate statistics shown on Exhibit 64 are not intrastate in character and that the revenues and expenses of the four roads there shown are seriously distorted by the arbitrary inclusion of interstate transportation revenues on the basis of the mileage traversed in Utah by interstate shipments and by the arbitrary apportionment to Utah of other revenues, and the apportionment to Utah of a part of the system expenses on the basis

of train mileage in Utah. The figures there shown do not even purport to reflect actual costs or revenues and consequently they provide an entirely false basis for determining operating ratios and traffic density.

7. Evidence of the Utah commission purporting to show that railroad operations in Utah were more favorable than in Colorado or over the entire system of the Denver and Rio Grande was analyzed and discussed by the Commission and found lacking in probative force (R. 115-116)—

"The Utah commission also submitted an exhibit portraying various operating statistics of the Denver & Rio Grande Western in Utah, Colorado, and for the entire system. The data were taken from the railroad's annual reports filed with the two State commissions for 1952 and 1953, and purport to show that the carrier's operations in Utah are substantially more favorable than in Colorado or over the entire system. Except for a minor portion in New Mexico, the Denver & Rio Grande Western's trackage lies wholly in Utah and Colorado. Some of the principal comparisons for 1953 are listed below:

	Utah	Colorado	System
Tons per loaded freight car	34.65	30.74	32.32
Tons per train	1,774	1,394	1,530
Tons per locomotive	1,002	777	857
Tons per mile of track	4,303 760	1,979,776	2,526,252

"Evidence similar in nature was offered in *Kansas City Cham. of Com. v. Atchison, T. & S. F. Ry. Co.*, 164 I. C. C. 302, to show the favorable results of railroad operations in Kansas, and that the carriers serving Kansas were not in need of increased revenue. We observed therein, at page 308, and it is equally pertinent here, that the method of allocating revenues and expenses to a particular State was

open to so many serious objections that the results obtained were unreliable."

In the case cited in the last paragraph quoted above the Commission said—

"Evidence was introduced by the Kansas commission intended to prove the favorable results of railroad operations in Kansas; and that carriers serving Kansas are not in need of increased revenues. Similar evidence was considered in the *Western Trunk-Line case* and discussed in chapter E of the report therein. In general it may be said that the method of allocating to a particular State of revenues and expenses is open to so many serious objections that the results obtained are unreliable. Incongruous situations would be created if the rate levels in each State were determined alone upon, or controlled by, such statistical results." (Page 308.)

8. Testimony of the Utah commission purporting to show that the Utah railroads derive greater ton-mile revenue on intrastate traffic in that State than they derive from their interstate operations was analyzed, criticized and found by the Commission to lack probative effect (R. 116-117)—

"A study was submitted by the Utah commission based on this Commission's carload waybill statistics for 1952, showing the Utah intrastate ton-mile revenue as compared with the revenue per ton-mile on interstate shipments originated during that year, separated as to the principal commodity groups. These ton-mile figures are listed below:

Products	Revenue per ton-mile	
	Intrastate Cents	Interstate Cents
Agriculture	2.57	1.14
Animals	4.15	2.71
Mines	1.06	.74
Manufactured miscellaneous	3.63	1.52
Total of all products	1.21	1.06

"It is generally recognized that as the length of the haul increases, the revenue per ton-mile decreases. The foregoing intrastate ton-mile revenues are computed on traffic which moved for relatively short hauls, while the interstate revenues are based on relatively long hauls. Due to a marked difference in the length of haul as between intrastate and interstate traffic, *the comparisons thus made are not determinative of the issues before us.*" (Italics added.)

In view of this Court's invariable rule that the weight and probative force of evidence is for the Commission to determine in the exercise of its discretion and judgment and that "its findings of fact supported by substantial evidence are not subject to review", *Florida v. United States*, 292 U. S. 1, 12—a rule which the dissenting district judge obviously refused to follow in his criticisms of the Commission's treatment of the evidence (R. 50-65)—we submit that this Court will not substitute its judgment for that of the Commission upon the evidence submitted by the Utah railroads, nor with respect to the deficiencies, unreliable results and lack of probative force in the evidence submitted by the appellants and other parties protesting the increases before the Commission.

IV. APPELLANTS' CONTENTION THAT THE UTAH ORDER IS INVALID BECAUSE OF THEIR ASSERTION THAT THE COMMISSION'S ORDERS IN EX PARTE 175 AUTHORIZING A "FLAT HORIZONTAL PERCENTAGE INCREASE" RESULTED IN INTERSTATE RATES THAT "WERE NOT JUST AND REASONABLE BUT WERE UNJUST AND CONTRARY TO THE LAW," IS A COLLATERAL ATTACK UPON THE EX PARTE 175 ORDER, AND IS OTHERWISE UNTENABLE.

Appellants' question "(4)" is stated as follows in their Jurisdictional Statement, p. 3:

"May a collateral attack be made in this action upon the Interstate Commerce Commission Order in Ex Parte No. 175."

In their brief (page 5), in restating question "(4)", appellants omit the word "collateral" and add "upon the legality".

Appellants' complaint in the District Court alleges in XV(a) (R. 11), that the interstate rates resulting from the 15% increase permitted by the Commission in Ex Parte No. 175 were "contrary to the evidence and to the law in that said interstate rates as fixed by Ex Parte No. 175 were not just and reasonable but were unjust and contrary to the law, in that said Ex Parte No. 175 granted flat horizontal percentage increase on all freight rates with certain restrictive exceptions," in contravention of provisions of Sections 1(5) and 3(1) of the Interstate Commerce Act and that for that reason the instant order designed to bring Utah intrastate rates into conformity with such interstate rates "is beyond the power and authority of the Interstate Commerce Commission and contrary to law."

The District Court correctly rejected this contention, saying (R. 48-49) the orders in Ex Parte 175 are "not subject to collateral attack"; that whether interstate rates fixed by Ex Parte 175 were just and reasonable "is for the Commission, not the courts", and that the courts "have upheld flat horizontal percentage rate increases which contained a savings clause to prevent injustices."

In their efforts to escape or evade the District Court's holding on this point appellants now assert (Br. 36-37) that, while they agree with the general principle that decisions of the Commission "are not open to collateral attack," they are "not here attempting to set aside the interstate increases as authorized in Ex Parte 175, "but are merely attacking "the legality of that [Ex Parte 175]

order as it applies to these proceedings," and that, therefore, "this is not a collateral attack" on that order.

Surely, this is a "distinction without a difference." The Commission's action and nation-wide order in Ex Parte 175 is the "natural basis" for its Utah order, *King v. United States,* 344 U. S. 254, 272. Appellants' attempt to nullify the Utah order by attacking "the legality" of its "natural basis" is unquestionably a collateral attack upon the Ex Parte 175 order.

The settled rule is that a collateral attack may not be maintained against an order of the Commission and that any contention challenging the validity of a Commission order can be made only in a direct suit under Urgent Deficiencies Act (28 U. S. Code, Sections 1336, 1398, and 2284). *In Callanan Road Co. v. United States,* 345 U. S. 507, the appellant assailed the validity of a Commission order on the ground that an order previously issued by the Commission was invalid. The Court held at page 512 that the appellant "cannot in this collateral proceeding attack the validity" of the other order previously issued by the Commission, citing *S. E. C. v. Central Illinois Corp.,* 338 U. S. 96, 143; *Stanley v. Supervisors of Albany,* 121 U. S. 535, 550; *Reconstruction Finance Corp. v. Lightsey,* 185 F. 2d 167; *City of Tulsa v. Midland Valley R. Co.,* 168 F. 2d 252, 254; *Brown County, Tex. v. Atlantic Pipe Line Co.,* 91 F. 2d 394, 398. See also *Ill. Cent. R. R. Co. v. Public Utilities Comm.,* 245 U. S. 493, 502-503; *North Dakota v. Chicago & N. W. Ry. Co.,* 257 U. S. 485, 489; *Texas v. Interstate Com. Comm.,* 258 U. S. 158, 164; *Lambert Co. v. Balt. & Ohio R. R. Co.,* 258 U. S. 377, 382-383.

But, even if the forbidden collateral attack were maintainable, it is beyond this Court's power to de-

termine whether or not the interstate rates prescribed by the Commission in Ex Parte No. 175 were "just and reasonable", for that is an administrative question committed by Congress exclusively to the Interstate Commerce Commission, *Texas & Pac. Ry. v. Abilene Cotton Oil Co.*, 204 U. S. 426; *Interstate Comm. Comm. v. Ill. Cent. R. R.*, 215 U. S. 452, 470; *Manufacturers Ry. Co. v. United States*, 246 U. S. 457, 481-483; *Assigned Car Cases*, 274 U. S. 564, 581; *Swayne & Hoyt, Ltd. v. U. S.*, 300 U. S. 297, 303-304; and *Montana-Dakota Co. v. Pub. Serv. Co.*, 341 U. S. 246, in which this Court held at pages 251-252:

> "Petitioner cannot separate what Congress has joined together. It cannot litigate in a judicial forum its general right to a reasonable rate, ignoring the qualification that it shall be made specific only by exercise of the Commission's judgment, in which there is some considerable element of discretion. It can claim no rate as a legal right that is other than the filed rate, whether fixed or merely accepted by the Commission and not even a court can authorize commerce in the commodity on other terms.
>
> "We hold that the right to a reasonable rate is the right to the rate which the Commission files or fixes, and that, except for review of the Commission's orders, the courts can assume no right to a different one on the ground that, in its opinion, it is the only or the more reasonable one."

The power of the Commission, challenged by appellants, to authorize a "flat horizontal percentage increase on all freight rates" without determining whether each and every one of the multitude of individual rates is lawful under the standards of Section 1(5) or Section 3(1) of the Act, has been sustained by the courts for

more than 50 years. In *New England Divisions Case*, 261 U. S. 184, the Court held at pages 197-198:

> "For many years before the enactment of Transportation Act, 1920, it had been necessary, from time to time, to adjudicate comprehensively upon substantially all rates in a large territory. When such rate changes were applied for, the Commission made them by a single order; and, in large part, on evidence deemed typical of the whole rate structure. This remained a common practice after the burden of proof to show that a proposed increase of any rate was reasonable had been declared, by Act of June 18, 1910, c. 309, § 12, 36 Stat. 539, 551, 552, to be upon the carriers. Thus, the practice did not have its origin in the group system of rate-making provided for in 1920 by the new § 15a. It was the actual necessities of procedure and administration which had led to the adoption of that method, in passing upon the reasonableness of proposed rate increases."

In a footnote on page 198 the Court cited numerous proceedings in which the Commission from its early days had adopted the "percentage" method of increasing rates to produce additional revenue needed by the carriers. The footnote is as follows:

> "*Advances in Rates—Eastern Case*, 20 I. C. C. 243, 248; *Railroad Commission of Texas v. Atchison, Topeka & Santa Fe Ry. Co.*, 20 I. C. C. 463, 484; *Five Per Cent. Case*, 31 I. C. C. 351, 402, 403, 448, 449, *1915 Western Rate Advance Case*, 35 I. C. C. 497; *Western Passenger Fares*, 37 I. C. C. 1; *Fifteen Per Cent. Case*, 45 I. C. C. 303. See also the successive orders issued in the Shreveport controversy, 23 I. C. C. 31; 34 I. C. C. 472; 41 I. C. C. 83; 43 I. C. C. 45; 48 I. C. C. 312. Compare *Houston East & West Texas Ry. Co. v. United States*, 234 U. S. 342, 349; *Eastern Texas R. R. Co. v.*

Railroad Commission of Texas, 242 Fed. 300; *Looney v. Eastern Texas R. R. Co.*, 247 U. S. 214; also *Illinois Central R. R. Co. v. State Public Utilities Commission*, 245 U. S. 493, with *Business Men's League of St. Louis v. Atchison, Topeka & Santa Fe Ry. Co.*, 41 I. C. C. 13, 503, and 49 I. C. C. 713. The Commission has, since 1920, also reduced rates in broad group proceedings upon consideration of typical conditions throughout the entire region involved in the reduction. *Reduced Rates, 1922*, 68 I. C. C. 676; *Rates on Grain, etc.*, 64 I. C. C. 85. Referring to the latter case the Commission said in their second report in this case (66 I. C. C. 203), 'In all such general rate cases we have realized and have held that if we were required to consider the justness and reasonableness of each individual rate, the law would in effect be nullified and the Commission reduced to a state of administrative paralysis.'"

In *United States v. Louisiana*, 290 U. S. 70, the Commission had in the *Fifteen Per Cent Case: 1931*, authorized increases in interstate rates which it later used as a basis for ordering Louisiana intrastate rates increased under Section 13(4) of the Act. In rejecting the contention that the Commission's order raising interstate rates was invalid because it did not find that each of the interstate rates resulting from such increase would be just and reasonable, this Court reviewed the purpose of the Act to develop and maintain an adequate national transportation system and held at pages 75-76:

"As pointed out in the reports of the Commission in this case and others (see Increased Rates, 1920, 58 I. C. C. 220; New York Passenger Fares, 59 I. C. C. 290), § 15a, by its terms, commands the Commission, in providing the required revenue by in-

creasing rates, to deal with the carriers of the nation as a whole or in broad classes, and as this Court recognized in the *New England Divisions Case, Supra,* 197, 198, this requirement would be nullified and the admini rative arm of the Commission paralyzed, if instead of adjudicating upon the rates in a large territory on evidence deemed typical of the whole rate structure, it were obliged to consider the reasonableness of each individual rate before carrying into effect the necessary increased schedule."

In support of their argument that the Commission's order in Ex Parte No. 175 is invalid, appellants cite (Br. 37) Section 15a(2) of the Act *as enacted in 1920.* The cited provisions, however, were repealed by Emergency Railroad Transportation Act, 1933, 48 Stat. L. 211, 220. The present Section 15a(2) reads as follows:

"In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service."

Appellants' assert that neither the railroads nor the Commission has in Ex Parte No. 175 or in other general rate increase cases given consideration to—

"* * * efficiency and economy of the management of the roads. Such situation has merely been presumed to exist." (App. Br. 37)

This collateral attack upon the proceedings in Ex Parte No. 175 and other general rate increase proceedings con-

ducted by the Commission is necessarily baseless and completely without factual or evidential foundation. If appellants desired to challenge the validity of those Commission proceedings upon the ground asserted "[a] direct attack in such circumstances was the remedy", *Callanan Road Co. v. United States*, 345 U. S. 507, 512. Moreover, in its first decision in Ex Parte No. 175, *Increased Freight Rates, 1951*, 280 I. C. C. 179, at pages 188-189, the Commission finds—

> "Upon the record we conclude and find that, to enable the petitioning and intervening carriers, including freight forwarders, *under honest, economical and efficient management*, to provide adequate transportation service to meet the needs of commerce, the postal service, and the national defense and specifically to meet increases in the costs of materials and supplies and the increased wages of their employees, both at present effective and impending, including the increased wages under an agreement (see apendix) entered into with nonoperating employees and called to our attention at the oral argument, of which we take official notice, the basic freight rates and charges of such petitioning and intervening carriers *may be justly and reasonably increased*, until the further order of the Commission, as hereinafter specified." (Italics added.)

In the instant case, the Commission's report summarizes (R. 99) evidence taken from the railroads' Exhibit 2 demonstrating the increase in operating efficiency and economy of Class I railroads serving Utah. There is no justification for baseless assertions by appellants that the Commission proceeded in this or any other case upon "unwarranted presumptions" or "matters of common knowledge" or upon "the fiction that substantial evidence exists where obviously none does" (App. Br. 43).

Under the heading, "State Authority v. Federal Authority", appellants express their alarm over the effect of the Commission's exercise of its powers under Section 13(4) of the Act upon the soverign power of the State of Utah to regulate intrastate rates. The last sentence in their Jurisdictional Statement (p. 16) reads—

> "If the power of the states to regulate intrastate rates is in fact dead, then it should be buried."

Similar and equally dramatic assertions were made in the first case reviewed by this Court involving the Commission's exercise of its powers under Section 13(4), *Wisconsin R. R. Comm. v. C., B. & Q. R. R. Co.*, 257 U. S. 563. At pages 590-591, the Court answered by saying—

> "It is said that our conclusion gives the Commission unified control of interstate and intrastate commerce. It is only unified to the extent of maintaining efficient regulation of interstate commerce under the paramount power of Congress. *It does not involve general regulation of intrastate commerce.* Action of the Interstate Commerce Commission in this regard should be directed to substantial disparity which operates as a real discrimination against, and obstruction to, interstate commerce, and must leave appropriate discretion to the state authorities to deal with intrastate rates as between themselves *on the general level* which the Interstate Commerce Commission has found to be fair to interstate commerce." (Italics added.)

The substantial disparity between the Utah intrastate rates and the interstate rates operates as a "real discrimination against, and obstruction to, interstate commerce," amounting to more than $1,800,000 annually. Having flatly refused to co-operate to any extent whatever in alleviating this discrimination to the end that the purpose of Congress to so adjust rates as to provide

an adequate national railroad transportation system might be realized, and having similarly refused to cooperate in other cases mentioned in the Commission's report in the instant case, it comes with poor grace, or none, and much too late, for the Utah commission now to complain of federal invasion of Utah's control over its intrastate rates.

CONCLUSION

The decree of the District Court dismissing the complaint should be affirmed.

Respectfully submitted,

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November, 1957.

PROOF OF SERVICE

I, ELMER B. COLLINS, counsel of record for railroad appellees herein, and a member of the bar of the Supreme Court of the United States, hereby certify that on the 6th day of November, 1957, I served, on behalf of all railroad appellees herein, copies of the foregoing brief on the adverse parties herein, as follows:

1. On the Public Service Commission of Utah by mailing a copy in a duly addressed envelope with air mail postage prepaid to:

E. R. Callister, Esq.
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2. On the Utah Citizens Rate Association by mailing a copy in a duly addressed envelope with air mail postage prepaid to:

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3. Also on the United States of America by mailing a copy in a duly addressed envelope with air mail postage prepaid to:

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4. Also on the Interstate Commerce Commission by mailing a copy in a duly addressed envelope with air mail postage prepaid to:

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APPENDIX A

The Pertinent Provisions of the Interstate Commerce Act (United States Code, Title 49), Involved in This Case Are as Follows:

National Transportation Policy—

"It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several states and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions; —all to the end of developing, coordinating and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy."

Section 13(3)—

"Whenever in any investigation under the provisions of this part, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation or practice, made or imposed by authority of any State, or initiated by the President during the period

of Federal control, the Commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this part or part III with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission; and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from time to time, to hold joint hearings with any such State regulating bodies on any matters wherein the Commission is empowered to act and where the rate-making authority of a State is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the cooperation, services, records, and facilities of such State authorities in the enforcement of any provision of this part or part III."

Section 13(4)—

"Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares,

charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding."

Section 15a(2)—

"In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service."

APPENDIX B

Ex Parte 74—

Increased Rates, 1920, 58 I C. C. 220; 58 I. C. C. 302

Utah Rates, Fares and Charges, 60 I. C. C. 388 (Feb. 1921)

Ex Parte 103—

Fifteen Per Cent Case, 1931, 178 I. C. C. 539; 179 I. C. C. 215

Increases in Intrastate Rates, 186 I. C. C. 615—Utah, p. 660 (Sept. 29, 1932)

Ex Parte 115—

Emergency Freight Charges, 1935 (March), 208 I. C. C. 4

Emergency Freight Charges Within Utah, 213 I. C. C. 249 (Dec. 1935)

Ex Parte 123—

Fifteen Per Cent Case, 1937-1938, 226 I. C. C. 41

(Utah commission authorized increases on some commodities—no 13th Section case filed.)

Ex Parte 148—

Increased Railway Rates, Fares and Charges, 1942 (March), 248 I. C. C. 545

Increases in Utah Freight Rates and Charges, 255 I. C. C. 97 (Jan. 11, 1943)

Ex Parte 162—

Increased Railway Rates, Fares and Charges, 1946 (Dec. 5), 266 I. C. C. 537

(Utah commission authorized increases only in part.)

Ex Parte 166—

Increased Freight Rates, 1947 (Oct. 6), 269 I. C. C. 33

(Utah commission authorized increases only in part.)

Ex Parte 168—

Increased Freight Rates, 1948 (Dec. 29), 272 I. C. C. 695

(Utah commission denied increases entirely, stating that railroads failed to show whether "the revenues from Utah intrastate traffic produce a fair return on that portion of the investment used on Utah intrastate traffic", and that it could not determine whether revenues from Utah intrastate traffic were inadequate "unless and until the carriers proved that fact by evidence segregating the expenses incurred in transporting Utah intrastate traffic and comparing them with the revenues derived therefrom" 287 I. C. C. 315, 320.

In *Utah Intrastate Freight Rates and Charges,* 287 I. C. C. 315 (Dec. 1, 1952), the Interstate Commerce Commssion authorized increases in Utah intrastate rates reflecting increases authorized by that commission in Ex Parte Nos. 162, 166 and 168 for interstate application but refused in part by the Utah commission. These increases were not permitted by the Utah commission on intrastate traffic until May 1, 1953, or a year after authorization by the Interstate Commerce Commission in Ex Parte 175.

Ex Parte 175—

Increased Freight Rates, 1951, 280 I. C. C. 179, 281 I. C. C. 557, 284 I. C. C. 589

Utah Intrastate Freight Rates and Charges, 297 I. C. C. 87 (Oct. 17, 1955)

SUPREME COURT, U.S.
NOV 15 1957
JOHN T. FEY, Clerk

No. 15

In the Supreme Court of the United States

OCTOBER TERM, 1957

PUBLIC SERVICE COMMISSION OF UTAH AND UTAH CITIZENS RATE ASSOCIATION, APPELLANTS

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

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OPINION BELOW

The opinion of the district court (R. 39–49) and the dissenting opinion of District Judge Christenson (R. 50–65) are reported in 146 F. Supp. 803.

JURISDICTION

The final judgment of the district court was entered on June 13, 1956 (R. 73), and notice of appeal was filed on July 10, 1956 (R. 75). Probable jurisdiction was noted on November 5, 1956. 352 U. S. 888. The

jurisdiction of this Court is conferred by 28 U. S. C. 1253 and 2101 (b).

QUESTIONS PRESENTED

1. Whether there is substantial evidentiary support for the Commission's finding that the Utah intrastate freight rates were below the rates on corresponding interstate traffic, and for its finding that conditions incident to intrastate transportation of freight in Utah were not more favorable than those incident to interstate transportation between Utah and adjoining states.

2. Whether appellants' attack upon the validity of the Commission's order, entered in an earlier and different proceeding, authorizing increased interstate rates is barred by the rule that orders of the Interstate Commerce Commission may not be collaterally attacked.

STATUTE INVOLVED

The pertinent provisions of the Interstate Commerce Act are set forth in the Appendix, *infra*, pp. 27–29.

STATEMENT

This case involves the validity of an order of the Interstate Commerce Commission, issued under Section 13 (4) of the Interstate Commerce Act, which required the railroads operating in Utah to establish, with certain exceptions, Utah intrastate freight rates reflecting the increases on corresponding interstate traffic to, from and between Utah points authorized by the Commission in proceedings designated *Ex parte No. 175*. Appellants attack the Commission's order principally upon the ground that there is no substan-

tial evidence to support the Commission's findings. They do not challenge the adequacy of the findings to support the order.

Ex parte 175 was a proceeding instituted before the Commission in March 1951 by most of the nation's railroads seeking a general increase in interstate freight rates. The Commission initially authorized a 2% increase in basic freight rates in western territory, and on further hearings substituted, first, a 6% increase, and, later, a 15% increase.[1] The final authorization, granted in April 1952, was to remain in effect until February 28, 1954, but was later extended to December 31, 1955, and, prior to that date, all time limitation was removed.[2]

The Commission found that these rate increases would yield additional revenue required by the railroads in order to maintain a national transportation system adequate to the needs of commerce, the postal system, and the national defense. The Commission found that the railroads needed more revenue because of sharply higher operating costs resulting from substantial wage increases (281 I. C. C. at 566–568; 284 I. C. C. at 595; 297 I. C. C. at 27), higher corporate tax rates (284 I. C. C. at 597), and increased costs for fuel, material and supplies (280 I. C. C. at 185; 281 I. C. C. at 568; 297 I. C. C. at 27). Moreover, there had been a decline in railway net ratio, and in net and cash working capital (284 I. C. C. at 624), a decrease in over-all rates of return (*id.* at 607, 612), and a cur-

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[1] 280 I. C. C. 179, 189; 281 I. C. C. 557, 639; 284 I. C. C. 589, 661–662.

[2] 284 I. C. C. 589, 666; 289 I. C. C. 395; 297 I. C. C. 17, 51.

tailment of maintenance due to reduced income (297 I. C. C. at 27–28).

Since the freight rate increases were grounded upon basic revenue needs, the Commission, as its reports show, considered and acted upon the railroads' over-all financial condition and upon the revenues, expenses and net income of their total operations, both interstate and intrastate. In extending the expiration date of the *Ex parte 175* increase, the Commission noted that all except three states (Arizona, Idaho, and Utah) had authorized either wholly or in large part increased intrastate rates corresponding to the increased interstate rates authorized in *Ex parte 175* (289 I. C. C. at 396, 441–444).

The railroads operating in Utah initiated three proceedings before the Public Service Commission of Utah (Utah Commission) seeking intrastate rate increases equal to those authorized for interstate traffic in the *Ex parte 175* proceeding. After the Utah Commission had refused to grant any part of the requested increases,[3] the Interstate Commerce Commission undertook, on the carriers' application, a Section 13 investigation of Utah intrastate rates. On the basis of the testimony (R. 138–417) and documentary evidence (R. 419–748) received at the hearing, the examiner filed a proposed report recommending that the Commission

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[3] The Utah Commission had previously failed to grant intrastate rate increases corresponding to the *Ex parte 162*, *166*, and *168* interstate increases, and granted them effective May 1, 1953 (over six years after the first *Ex parte 162* increase, 264 I. C. C. 695, 745) only after the Interstate Commerce Commission had ordered the carriers involved to put into effect such intrastate increases (R. 96–97).

find that the existing Utah intrastate rates cause unjust discrimination against interstate commerce (R. 4). Following oral argument, the full Commission found that these rates unduly discriminate against interstate commerce (R. 95, 118).

The Commission's report, which occupies 25 pages of the printed record (R. 95–120), shows that the net property investment of the railroads serving Utah has risen, while their rate of return on net investment has been declining; that in 1952 the revenue per ton-mile on all traffic (interstate and intrastate) in Utah was less than in the mountain-Pacific states, less than in the western district, and less than in the entire United States; and that the estimated additional annual revenue which would be received under the proposed increased intrastate rates was approximately $1,880,000 (R. 98, 99, 117). Comparative intrastate and interstate rates for the principal commodities transported by rail in Utah are set forth (R. 100–113).[4] The report also discusses and evaluates the evidence introduced by appellants designed to show that in Utah operating conditions in intrastate traffic are more favorable than in interstate traffic (R. 114–117).

Based on its consideration of the entire evidence, the Commission found, *inter alia* (R. 118–119): Conditions incident to intrastate freight transportation are not more favorable than those incident to interstate transportation between Utah and adjoining

[4] The commodities dealt with are coal, coke, iron ore, manufactured iron and steel, lead and zinc ores, uranium and vanadium ores, waste materials, clay and bentonite, sand and gravel, lime rock, fuel oil, gasoline, cement, sugar, wheat, animal and poultry feed, sheep and goats, and cattle.

states. Present Utah intrastate rates (except on sugar beets and beet-sugar molasses destined to sugar factories, and certain specified rates on coal, sheep and cattle) are "abnormally low" and do not contribute their "fair share" to the revenues required by the carriers to enable them to render adequate and efficient service, and to develop and preserve a national transportation system adequate to meet the needs of commerce, the postal service, and national defense. These intrastate rates cause, and for the future will cause, "unjust discrimination against interstate commerce." Such discrimination should be removed by applying to intrastate rates "the same respective increases" authorized for interstate commerce in *Ex parte 175*.

The Commission excluded from the authorized increase any increase which would make the intrastate rate higher than the corresponding interstate rate for a like distance (R. 119), and the Commission expressly stated that its findings relate to Utah intrastate rates "generally" and are without prejudice to re-examination of the lawfulness of any "particular" rate (R. 120). An order giving effect to the findings was entered on February 8, 1956 (R. 130–132), and appellants promptly instituted the present suit to have the order set aside.[5]

The court in its decision upholding the order recognized that intrastate rates are "primarily the concern of the state" (R. 45) and that mere rate disparity "is not enough to warrant interference by the Inter-

[5] A temporary restraining order issued by a single district judge enjoined enforcement of the order until determination of the cause by the three-judge district court (R. 28–32).

state Commerce Commission" (R. 46). The court held that the finding that existing Utah intrastate rates unduly burden and discriminate against interstate commerce was not grounded solely on disparity between these rates and interstate rates, but was additionally grounded on the showing that "the conditions under which interstate and intrastate traffic move were substantially the same with respect to all factors bearing on the reasonableness of the rates" (R. 46). The court, after discussing the facts and certain applicable judicial decisions, said (R. 49): "We have considered the voluminous record and conclude that the findings of the Commission are supported by substantial evidence."

The court also rejected plaintiffs' contention that the "flat percentage increase" of interstate rates in *Ex parte 175* was unlawful. The court pointed out that the validity of that order is not subject to collateral attack and that various decisions of this Court had upheld the validity of like orders (R. 48–49).

SUMMARY OF ARGUMENT

I

A. The Interstate Commerce Act as amended in 1920 makes it the duty of the Interstate Commerce Commission to administer the Act to the end of developing a national transportation system adequate to the country's needs, and to consider, when determining the reasonableness of rates, the railroads' need for revenues sufficient to enable them to provide adequate and efficient service. To complement these provisions, Congress, by enactment of Section 13 (4), gave the

Commission authority to adjust upwards intrastate rates which do not make their fair contribution to the railroads' over-all revenue needs and thereby unjustly discriminate against interstate commerce. This Court has consistently held that Section 13 (4) should not be interpreted as imposing upon the Commission requirements respecting findings and evidence so exacting as to prevent or unreasonably delay prompt and effective administration of the section.

B. Appellants attack the Commission's order increasing Utah intrastate rates upon the ground that two of the Commission's findings are not supported by substantial evidence. The first such finding, that existing intrastate rates are abnormally low and fail to contribute their fair share of the railroads' revenue needs, has the support of the evidence upon which the Commission based its findings that various intrastate rates (involving commodities constituting a major part of Utah freight transportation) were materially lower than the corresponding interstate rates for like distances. It has the support of other examples of rate disparities shown by the evidence, and the evidence that some of the rate disparities had an adverse competitive effect on interstate shippers and shipments. We submit that evidence of this scope and character provides sufficient support for the Commission's determination, made in the exercise of an informed judgment as to rate making and rate comparisons, that the level of intrastate rates was sufficiently below the level of corresponding interstate rates to throw upon interstate commerce an undue share of the burden of meeting the railroads' revenue

needs. And the Commission provided safeguards against any unwarranted increase in individual intrastate freight rates. It provided that the corresponding interstate rate should be the ceiling for any increased intrastate rate, and it left open the door to re-examination of the lawfulness of any intrastate rate increased by its order.

C. The Commission's finding that the conditions governing intrastate transportation were not more favorable than those governing interstate transportation has the support of evidence that goods moving intrastate and those moving interstate are handled in precisely the same manner and are intermingled on the same trains. Such evidence does not lose its probative force by reason of the circumstance that, in railroad operations generally, there is essential unity between intrastate and interstate transportation—in the equipment and manpower employed and in other transportation-cost factors. The substance of appellants' attack upon the Commission's finding is, we submit, not that the finding lacks evidentiary support, but that the Commission did not give controlling weight to evidence presented by appellants designed to show that transportation costs are lower on intrastate freight than on interstate freight. The Commission considered this evidence and stated the grounds for concluding that it was not persuasive. Furthermore, appellants' evidence was speculative and inconclusive as to the ultimate fact for which it was offered.

II

Appellants contend that the order of the Commission authorizing increased interstate rates, entered in the prior *Ex parte 175* proceeding, is invalid. In the present Section 13 (4) proceeding appellants may not rely upon alleged invalidity of the *Ex parte 175* order because orders of the Interstate Commerce Commission may not be collaterally attacked. In addition, the asserted grounds of invalidity are without merit.

ARGUMENT

I

THE COMMISSION'S FINDING THAT THE UTAH INTRASTATE RATES UNDULY DISCRIMINATED AGAINST INTERSTATE COMMERCE IS SUPPORTED BY SUBSTANTIAL EVIDENCE

A. THE APPLICABLE STATUTORY PROVISIONS AND THEIR PURPOSES, AS RELATED TO APPELLANTS' ATTACK ON THE SUFFICIENCY OF THE EVIDENCE

Section 15a of the Interstate Commerce Act (*infra*, p. 29) requires the Commission, in determining reasonable rates, to give due consideration to the need of the railroads for revenues sufficient to enable them to provide adequate and efficient rail service. The National Transportation Policy embodied in the Act (*infra*, p. 27) directs the Commission to administer its provisions to the end of developing a national transportation system adequate to meet the needs of national commerce, the postal system, and national defense. Subsections (3) and (4) of Section 13 which, like Section 15a, were added to the Act by the Transportation Act, 1920, gave to the Commission the limited power to alter intrastate rates which unjustly discrim-

inate against commerce, in recognition of the fact that the revenue needs of the railroads relate to and are the product of their entire operations, intrastate as well as interstate.

In the first case under Section 13 (4) to come before this Court it declared that there is a "dovetail relation" between the purpose of Section 15a and the prohibition in Section 13 (4) of intrastate rates which unjustly discriminate against interstate commerce. *Wisconsin Railroad Commission* v. *C., B. & Q. R. R. Co.*, 257 U. S. 563, 586. This is so because, in securing for the railroads revenues which will enable them to maintain a transportation system adequate to the country's needs, "the lower the intrastate rates, the higher the interstate rates may have to be", thus casting on interstate commerce an undue proportion of the burden of providing the railroads' requisite revenues (*ibid.*). The Court said (*id.*, 585–586):

> Intrastate rates and the income from them must play a most important part in maintaining an adequate national railway system. * * * The effective operation of the act will reasonably and justly require that intrastate traffic should pay a fair proportionate share of the cost of maintaining an adequate railway system.

The Court also held that authorizing the Commission to increase intrastate rates which do not contribute their fair share of the railroads' revenue needs is a constitutional exercise of the commerce power of Congress "in view of the blending of both [intrastate and interstate traffic] in actual operation." *Id.*, 588. "The same rails and the same cars carry both. The

same men conduct them. Commerce is a unit and does not regard state lines * * *." *Ibid.*

Appellants do not question these basic propositions, from which the Court has never departed, but question the sufficiency of the evidence to support the ultimate finding that existing Utah intrastate rates discriminate against interstate commerce. This attack, we submit, must be measured against the necessarily national scope of revenue proceedings such as *Ex parte 175*, and the Commission's duty to implement such a proceeding by a Section 13 (4) proceeding if intrastate traffic, not differing in its operating conditions from interstate traffic, is being transported at rates lower than those applied to interstate commerce. Our position is that there is substantial evidence in support of the Commission's basic findings, that proof is not required as to every factor or element that may be relevant to these findings, and that appellants are really demanding that the Commission be held to a degree of proof so exacting as to stultify effective administrative action.

In this connection, we deem it significant that this Court has rejected any interpretation of Section 15a or Section 13 (4) which would require findings by the Commission entailing administrative tasks so difficult and long drawn out as to defeat the statutory objective. In *Wisconsin Railroad Commission, supra*, the Court rejected the contention that the fair return contemplated by Section 15a was on the property used in interstate commerce segregated from that used in intrastate commerce. It said (p. 588) that to impose on the Commission this duty, "and to do this in a rea-

sonably short time for practical use, as contemplated by the statute, would be to assign it a well-nigh impossible task. This, of itself, prevents our giving the words such a construction unless they clearly require it."

In *United States* v. *Louisiana*, 290 U. S. 70, 75–76, this Court declined to construe Section 15a as authorizing a rate increase thereunder only if the Commission has determined that the authorized increase is reasonable as to each individual rate subject to the increase. The construction was rejected because it would mean that "the administrative arm of the Commission [would be] paralyzed." The Court also held (pp. 78–79) that in a proceeding under Section 13 (4) the Commission need not determine that each individual intrastate rate, as increased by its order, is just and reasonable. Such a requirement would "similarly prevent" effective enforcement of the section.

In *Florida* v. *United States*, 292 U. S. 1, another Section 13 (4) proceeding, the Court said (p. 9) that the requirement of essential findings as to revenues "did not demand an impractical exactness", and that losses through inadequate rates could properly be determined although proof was lacking "of the precise extent of such losses."

B. THE EVIDENCE SUPPORTS THE COMMISSION'S FINDING THAT THE EXISTING UTAH INTRASTATE RATES WERE BELOW THE LEVEL OF CORRESPONDING INTERSTATE RATES, AND FAILED TO CONTRIBUTE THEIR FAIR SHARE OF THE RAILROADS' REVENUE NEEDS

The circumstances under which the Commission may validly require an increase in intrastate rates in order to remove unjust discrimination against interstate

commerce are (1) that existing intrastate rates are below the level of interstate rates, do not contribute their fair share of the railroads' revenue needs, and cause unjust discrimination against interstate commerce; (2) that transportation conditions for intrastate commerce are no more favorable than for interstate commerce; (3) that the increase in intrastate rates ordered by the Commission will yield substantial additional revenue; and (4) that intrastate rates, so increased, will be reasonable and remove the existing unjust discrimination against interstate commerce. *King* v. *United States*, 344 U. S. 254, 267–276. Appellants concede that the Commission made adequate findings with respect to each of these factors. They urge lack of evidentiary support only as to the findings that Utah intrastate rates, prior to the increase ordered by the Commission, were below the level of interstate rates, and that transportation conditions for intrastate commerce were no more favorable than for interstate commerce.

At this point, we consider the sufficiency of the evidence to support the finding that the Utah intrastate rates imposed by state authority are materially below the corresponding interstate rates which were authorized by the Commission in *Ex parte 175* in order to effectuate the objectives of Section 15a. of the Act and the National Transportation Policy.

The Commission's report refers to various examples of interstate rates which are materially higher than the intrastate rates applicable to shipments of like distances. The examples cover shipments of coal (R. 101, 103), coke (R. 104), clay and bentonite (R. 108–

109), sand and gravel (R. 109), lime rock (R. 109), cement (R. 110), sheep and goats (R. 112), and cattle and calves (R. 113). Additional detail appears in the record. Thus, an exhibit setting forth rates on coke (in cents per net ton) shows that the interstate rate from Salt Lake City to Whitney, Idaho (133 miles), is 375, while the intrastate rate from the same origin to Lewiston, Utah (126 miles) is 286; and that the interstate rate from Ironton, Utah, to Whitney, Idaho (183 miles) is 375, while the intrastate rate from the same point to Lewiston (176 miles) is 313 (R. 531). The report of the Commission also sets forth certain rates on coal in cents per net ton, and shows the following rate disparities for shipments of like distance: interstate 386, intrastate 346; interstate 605, intrastate 555; interstate 400, intrastate 308 (R. 100–101).

The rate disparity disclosed as to coal and coke is particularly significant. The evidence shows that failure to apply the *Ex parte 175* increases to Utah intrastate traffic was estimated to cause an annual revenue loss of about $1,860,000, and that about $575,000 of this amount, or nearly one-third, was estimated to result from low intrastate rates on coal, and over $1,500,000, or more than 80% of the total, was attributed to low intrastate rates on transportation of products of mines (R. 251, 432).

Competition among shippers and their customers was affected by the disparity between intrastate and interstate rates. Out-of-state shippers whose consignments to Utah customers move at interstate rates compete with Utah shippers whose shipments to Utah customers move at lower intrastate rates (R. 253, 265–

267, 276, 278). In order to permit interstate traffic to compete with intrastate, the *Ex parte 175* increase was removed from some interstate rates (R. 266). Interstate rates on uranium and vanadium were reduced on hauls from Thompson, Utah, to Nada, Colorado, because of the lower intrastate rates on competing traffic between Green River, Utah, and Kalunite, Utah (R. 262). For the same reason, interstate increases were removed from rates on bituminous coal (R. 251-252), and they were removed on coking coal "to enable producers in Colorado to maintain a competitive position with Utah producers" (R. 253).

We submit that evidence of the foregoing nature and scope sufficiently supports a general finding as to the relationship between intrastate and interstate rates. "Where the Commission seeks to deal generally with rates and revenues in a large area on evidence typical of the area as a whole, it may proceed by way of a general order supported by sufficient evidence applicable to the whole territory." *King* v. *United States*, 344 U. S. 254, 275. The Commission, having special knowledge and competence in the field of rate making and rate comparisons, may make its own appraisal of the facts disclosed by the evidence. Here, as in a question of transportation economics, "the Commission's judgment is entitled to great weight." *New York* v. *United States*, 331 U. S. 284, 328.

We deny appellants' statement (Br. 25) that cross-examination of the witness Watson developed that "in almost every instance" in which mileages were comparable intrastate rates were already higher than

the increased interstate rates, and their further statement (Br. 28) that the evidence submitted by this witness established that "by and large" existing intrastate rates were higher than comparable interstate rates. The only such instances developed were two intrastate rates on sheep and one on cattle (R. 202–205), which rates the Commission *excepted* from the increase in intrastate rates which it ordered (R. 119, 130).

Furthermore, the Commission did not in any *pro forma* manner require a blanket increase in intrastate rates. It excepted from its order intrastate rates which were shown to be "now as high as corresponding interstate rates" for comparable distances (R. 119). It also specified that no increased intrastate rates should exceed "the interstate rates on like traffic to or from Utah for like or greater short-line distances over the same lines of railroad" (*ibid.*). Appellants state, without any record reference, that most of the traffic in the west moves on flat commodity rates not based upon mileage,[5] and call this limitation "an illusory protection" (Br. 28). Certainly a limitation which is defined and specific, and therefore readily applicable, is not illusory. In addition, the Commission made its findings and order without prejudice to the right to challenge, "upon complaint or otherwise", the lawfulness "of any individual Utah intrastate rate on any particular commodity" (R. 120). This saving clause, in substance the same as that included in the order approved in the *Wisconsin*

[5] We are aware of no evidence which supports this broad statement.

Railroad Commission case, 257 U. S. 563, 566, 591, permits any appropriate adjustment of individual intrastate rates. See also *King* v. *United States, supra,* p. 269, n. 13, and p. 276.

We also deny appellants' statement (Br. 27) that the Commission ignored the exhibits (68–73) introduced by the witness Manley, who appeared on behalf of one of the protestants to the proposed intrastate rate increase. The Commission considered and discussed facts disclosed by Exhibits 69–71 (R. 103).[7] It stated that comparison of Utah intrastate rates with intrastate rates in certain other states does not afford a basis for determining the lawfulness, under Section 13, of the Utah intrastate rates (*ibid.*). And in the three instances, as shown by the exhibits, of intrastate coal rates higher than corresponding interstate rates, the Commission *excluded* these rates from its rate increase order (R. 103, 119, 131).

C. THE EVIDENCE SUPPORTS THE COMMISSION'S FINDING THAT CONDITIONS INCIDENT TO UTAH INTRASTATE TRANSPORTATION ARE NOT MORE FAVORABLE THAN THOSE INCIDENT TO UTAH INTERSTATE TRANSPORTATION

Four railroads operate both in Utah and other states: the Union Pacific, the Denver & Rio Grande, the Southern Pacific, and the Western Pacific (R. 16–17).[8] Only two of these carriers, the Union Pacific

[7] Exhibit 68 (R. 729), which merely showed certain intrastate rates without any comparison with interstate rates, and Exhibits 72 and 73 (R. 733–734), which merely showed increases which had been made in certain interstate coal rates, were not of sufficient relevance to merit discussion.

[8] Five other railroads operate wholly within Utah: the Ogden Railway, the Bamberger Railroad, the Salt Lake, Garfield &

and the Denver & Rio Grande, haul any appreciable amount of intrastate traffic.[9]

The assistant superintendent of the Utah Division of the Union Pacific (R. 242) testified that on this railroad Utah interstate and intrastate traffic is handled by the same crews and same clerks, and hauled on the same trains, and that in all the trains interstate and intrastate traffic are intermingled (R. 244). He further testified that the only operating difference between interstate and intrastate movements was that work done in accumulating some intrastate traffic was not done for interstate traffic (R. 246). A vice president of the Denver & Rio Grande (R. 317) gave even more detailed testimony as to the complete identity, from an operating standpoint, of that railroad's interstate and intrastate Utah traffic (R. 318–319). He also testified that a considerable part of the D. & R. G.'s Utah intrastate traffic originated on its branch lines, and that its wage rates on some of its branch lines were higher than on its main line, and higher than on other railroads operating in Utah (R. 319–320).[10]

Proof that interstate and intrastate traffic move on the same trains and are handled in precisely the same manner is evidence of the most convincing character

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Western Railway, the Tooele Valley Railway, and the Utah Railway (R. 16–17).

[9] In 1953, the revenue from Utah intrastate traffic was: Union Pacific, $8,732,091; Denver & Rio Grande, $5,864,623; Southern Pacific, $109,592 (R. 165). As to the Western Pacific's relatively insignificant participation in Utah intrastate traffic, see Exhibit 7 (R. 452).

[10] Compensation to employees constitutes more than 60% of railroad operating expenses (R. 150).

that operating costs for intrastate freight transportation are not more favorable than for interstate transportation. The railroad's evidence therefore supported the Commission's finding to this effect unless other evidence required a contrary finding. Proof that precisely the same operations were performed whether the commodity transported was moving in interstate or intrastate commerce did not lose its evidentiary force, as appellants seem to imply (Br. 24), merely because the same thing may be true of railroad operations generally.

It is possible, although not probable, that, notwithstanding identity in the character of interstate and intrastate operations, there may exist special circumstances which affect intrastate transportation solely or primarily and bring about either higher or lower operating costs than for interstate transportation. Appellants and other protestants to an intrastate rate increase introduced evidence designed to show lower intrastate operating costs. Appellants' complaint necessarily must be, as we see it, not that there is no substantial evidence to support the Commission's finding, but that the Commission erred in failing to give controlling weight to the protestants' evidence. The evidence of this kind on which appellants rely (Br. 30–33) is: (1) as to the four railroads operating within and without Utah, greater traffic density on their Utah traffic than on their system-wide traffic; (2) for the same roads, a lower operating ratio for Utah traffic than system-wide; and (3) a high rate of return on investment in transportation property for

the Bamberger Railroad, which operates solely in Utah.

(1) The figures as to both traffic density and operating ratio are taken from Exhibit 64 (R. 548). Those which are labeled "intrastate" in fact include all traffic movements in Utah, whether interstate or intrastate, and therefore include all "bridge" traffic moving across the state with neither origin nor destination in Utah (R. 293). Such bridge traffic, if a relatively large part of what is labeled intrastate, might completely distort the so-called "intrastate" figures shown. It was the Commission's considered conclusion that the comparisons made in Exhibit 64 "are of little significance in our determination here" (R. 115).

The Commission also deemed the traffic density figures unreliable because they were based on main-line trackage and did not include branch-line trackage (R. 115).[11] In addition, appellants' own argument based on traffic density (ton-miles transported per mile of track) is, on the facts of this case, patently inconclusive. It rests on the reasoning that while direct operating costs vary with the amount of freight handled and the distance, fixed costs (such as general overhead and property taxes) do not change materially with the volume of freight handled and bear less heavily on each unit as the volume of freight goes up. But theoretical saving of the kind suggested is an insufficient basis for a determination that operating costs in intrastate commerce are lower than in interstate commerce,

[11] Branch-line trackage in Utah may well have been a considerably higher percentage of total trackage than its percentage of total trackage system-wide.

to a degree which is significant in a Section 13 (4) proceeding, absent any evidence permitting even an educated guess as to the amount of the extra contribution to fixed costs resulting from greater traffic density. Here there was no such evidence.

(2) As to the evidence designed to show more favorable operating ratios in Utah than system-wide; the Commission stated, as it had declared earlier in *Cham. of Comm., Kansas City* v. *Atchison, T. & S. F. Ry. Co.*, 164 I. C. C. 302, 308, that "the method of allocating revenues and expenses to a particular State was open to so many serious objections that the results obtained were unreliable" (R. 116).[12]

(3) The Commission considered and rejected the contention that the high rate of return on net investment in 1953 of the Bamberger Railroad showed that the railroads operating in Utah do not need an increase in Utah intrastate rates. The Commission pointed out that since September 1952 this railroad has had only 37 miles of main-line track (R. 99). The Commission said (R. 100):

> The Bamberger has no passenger operations, and it is the only railroad serving Hill Air Force Base. The seeming prosperity of the Bamberger does not prove that the other lines

[12] The Utah revenues and expenses shown in Exhibit 64 were taken from annual reports which the railroads were required to file with the Utah Public Service Commission (R. 287–288). The Union Pacific reports stated that revenue and expenses in Utah reflected the formula for apportionment prescribed by the Utah Commission, and that the prescribed formula "does not in fact * * * reflect the actual cost of operation in the State of Utah" (R. 295).

> operating in Utah do not require additional revenue.

As countless Commission studies attest, it has been the unvarying experience of American rail carriers, for many years, that freight traffic is more productive than passenger traffic. For a review of this history, see *King* v. *United States*, *supra*, pp. 260–267.

Moreover, if the Bamberger's rate of return is of any significance, so is that of the Utah Railroad, which also operates only within Utah. That railroad had a 1953 rate of return of less than 1% (R. 364).

Appellants state (Br. 35):

> The basic Utah intrastate rates were established many years ago when Utah's economy was largely agricultural and when traffic density was low. High rates therefore had to be imposed to compensate for the low density. Succeeding horizontal percentage increases down through *Ex Parte No. 168* tended further to distort the difference rather than to bring Utah rates down into line with interstate rates.

There is no evidence that the Utah intrastate rates to which the *Ex parte 162*, *166* and *168* increases were applied were the intrastate rates "established many years ago," or that such intrastate rates were "[h]igh rates." The statements quoted above, being without evidentiary support, must be disregarded.

We submit, in sum, that there was convincing affirmative evidence that conditions bearing on the carriage of Utah intrastate traffic are not more favorable than conditions affecting the movement, within Utah, of interstate traffic, and that protestants' efforts to overcome this evidence were weak and unpersuasive.

Certainly, it cannot be said in this case that the expert agency's evaluation of the facts was arbitrary. In substance, petitioners are simply seeking to have the reviewing court weigh the evidence *de novo*, reach a judgment, and substitute that judgment for the Commission's. That is not the reviewing court's function.

II

IN THE PRESENT SECTION 13 (4) PROCEEDING, APPELLANTS MAY NOT COLLATERALLY ATTACK THE VALIDITY OF THE INTERSTATE RATE INCREASES AUTHORIZED BY THE COMMISSION IN THE *EX PARTE 175* PROCEEDING

Appellants contend (Br. 36–41) that the flat percentage increase authorized for the majority of interstate rates in th *Ex parte 175* proceeding was unlawful. Their subsidiary contention is that an order increasing intrastate rates in order to remove unjust discrimination against interstate commerce is invalid if the discrimination results from higher interstate rates established pursuant to an order of the Commission which itself is invalid. The correctness of the subsidiary contention need not be considered because, as the court below held (R. 48), the rule that orders of the Interstate Commerce Commission may not be collaterally attacked bars the appellants from raising the question of the validity of the *Ex parte 175* order.

Appellants concede that orders of the Commission are not open to collateral attack, but they contend that, since they are not "attempting to set aside the interstate increases as authorized in *Ex parte 175*", they are not collaterally attacking the validity of the order entered in that proceeding (Br. 36–37).

Certainly, however, the attack on that order, being made in a separate and independent proceeding, is collateral and, no less plainly, appellants are requesting a judicial determination that the order is invalid. Absence of a prayer that the attacked order be set aside does not take a case out of the rule against collateral attack—the very fact that the attack is collateral prevents grant of this relief. Cf. *Callaway Road Co.* v. *United States*, 345 U. S. 507, 512; *Securities and Exchange Commission* v. *Central-Illinois Securities Corp.*, 338 U. S. 96, 143.

Furthermore, appellants' attack upon the *Ex parte 175* order is wholly without merit. Appellants did not introduce the *Ex parte 175* record in the present proceeding, and there is therefore no foundation for appellants' contention (Br. 37) that in the *Ex parte 175* proceeding the Commission did not require evidence that the railroads were efficiently managed. See *Mississippi Valley Barge Co.* v. *United States*, 292 U. S. 282, 286.

Appellants make the curious contention (Br. 38) that, since long-haul charges are higher than short-haul charges, the flat percentage increase authorized in *Ex parte 175* results in larger dollar and cents increases for long-haul shippers than for short-haul shippers, and appellants imply that this increase was therefore unduly preferential to short-haul shippers and unduly prejudicial to long-haul shippers. The dollar charge paid by long-haul shippers is, of course, greater than the dollar charge paid by short-haul shippers because the former are rendered more transportation service by reason of the greater distances

their property is transported. When both long-haul charges and short-haul charges are increased by the same percentage, the rate relationship of the two types of shippers is left unchanged. Plainly there is not thereby created either undue preference or undue prejudice.

CONCLUSION

The judgment of the district court should be affirmed.

Respectfully submitted.

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NOVEMBER 1957.

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[18] On a per ton-mile basis; the long-haul shipper's charge is generally lower than the short-haul shipper's charge (R. 116).

APPENDIX

The Interstate Commerce Act, 24 Stat. 379, as amended, 49 U. S. C. 1, *et seq.*, provides in part as follows:

NATIONAL TRANSPORTATION POLICY

It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation, subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy. [49 U. S. C. preceding Sec. 1.]

* * * * * *

Sec. 13. (3) Whenever in any investigation under the provisions of this part, or in any investigation instituted upon petition of the car-

rier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State, or initiated by the President during the period of Federal control, the Commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this part or part III with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission; and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from time to time, to hold joint hearings with any such State regulating bodies on any matters wherein the Commission is empowered to act and where the rate-making authority of a State is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the cooperation, services, records, and facilities of such State authorities in the enforcement of any provision of this part or part III. [49 U. S. C. 13 (3).]

Sec. 13. (4) Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge,

minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding. [49 U. S. C. 13 (4).]

* * * * * *

SEC. 15a. (2) In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service. [49 U. S. C. 15a (2).]

SUPREME COURT, U.S.
FILED
JUN 17 1958
JOHN T. FEY, Clerk

No. 15

In the Supreme Court of the United States

OCTOBER TERM, 1957

o——o——o

Public Service Commission of Utah and Utah Citizens Rate Association,

v.

United States of America and Interstate Commerce Commission,
The Denver and Rio Grande Western Railroad Company,
Union Pacific Railroad Company,
Southern Pacific Company,
The Western Pacific Railroad Company,
Utah Railway Company,
Bamberger Railroad Company,
Tooele Valley Railway Company,
Salt Lake, Garfield and Western Railway Company,
The Ogden Union Railway and Depot Company.

o——o——o

PETITION FOR REHEARING

o——o——o

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Law Briefs — OMAHA LINO-SLUG PRINTING CO., 418 So. 15th St.

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STATUTE CITED:

Interstate Commerce Act, as amended: 49 U. S. C. §§1, *et seq.*:

No. 15

In the Supreme Court of the United States

OCTOBER TERM, 1957

o———o———o

Public Service Commission of Utah and Utah Citizens Rate Association,

v.

United States of America and Interstate Commerce Commission;
The Denver and Rio Grande Western Railroad Company;
Union Pacific Railroad Company,
Southern Pacific Company,
The Western Pacific Railroad Company,
Utah Railway Company,
Bamberger Railroad Company,
Tooele Valley Railway Company,
Salt Lake, Garfield and Western Railway Company,
The Ogden Union Railway and Depot Company.

o———o———o

PETITION FOR REHEARING

o———o———o

The railroads named above respectfully petition the Court, pursuant to Rule 58, for a rehearing in the above-entitled cause, and for reconsideration of the Court's 5 to 4 decision of May 19, 1958, setting aside an order of the Interstate Commerce Commission issued under Section 13(3) and (4) of the Interstate Commerce Act, requiring the railroads operating in Utah to increase their intrastate freight rates and charges (with certain exceptions) in Utah so as to remove unjust discrimination against interstate commerce.

We are thoroughly aware that this Court very rarely grants a petition for rehearing and then only in unusual or unique circumstances (Supreme Court Practice, Second Edition, by Stern and Gressman, page 351). However, we are confident that the grounds of this petition present circumstances of such unusual, unique and unprecedented nature as to impel rehearing and reconsideration of the majority opinion. In reaching its decision the majority, we submit, was clearly misled by or did not comprehend that in order to arrive at the low Utah intrastate operating ratio and high intrastate traffic density, accepted by the majority, the Utah commission, without so informing the Court, used its own false-labeled "intrastate statistics", which included not only intrastate traffic but also interstate traffic more than five times the volume of the intrastate traffic. Thus, the Utah commission, with inadvertent approval of the majority of the Court, falsely credits the Utah intrastate traffic with more than five times its actual density, and, by including revenues from *all interstate traffic* moved in and through Utah, the Utah commission falsely represents that its intrastate traffic and rates produced more than five times the revenues actually derived from them.

Surely, the majority of the Court would not knowingly and intentionally espouse a formula requiring that in testing their validity under Section 13, intrastate rates and traffic must be credited with, and considered as having produced all of the net ton miles and all of the revenues derived by the carriers from *all* traffic—interstate as well as intrastate—that moved within, to, from and across a state. Under such a false formula, every state in the United States could always show that its intrastate rates never discriminate against interstate commerce, but

contribute several times their fair share to over-all revenues needed to maintain the national railway system, since they would be credited with several times the revenues they actually produce.

The 5 to 4 decision makes abrupt, unexplained but apparently rigid, rulings of such far-reaching importance and which so far depart from, conflict with, or reverse rulings established by a long and undeviating line of this Court's decisions with respect to the nature, scope and probability of evidence required to support a Commission order under Section 13 of the Act, as to leave in doubt, conflict and chaos the status of the law governing Section 13 proceedings and practically to defeat the legislative purpose, and deprive the railroads of the benefits of that Section.

We will endeavor to state briefly and distinctly the separate grounds of this petition at the beginning of and in connection with our discussion of each of the separate grounds upon which rehearing is sought.

I.

As the Utah Commission's False-Labeled "Intrastate Statistics" Commingled and Included Interstate Revenues and Net Ton Miles of Interstate Traffic That Exceeded by More Than Five Times the Utah Intrastate Revenues and Net Ton Miles, Those Statistics Were Without Any Probative Force Whatever, and Afforded no Basis for the Finding in the Majority Opinion That Those Statistics Indicated "That Intrastate Traffic Moved at Lower Cost Than Interstate" and Were Convincing Evidence of "Greater Density on Intrastate Operations" and "Lower Operating Ratios and Higher Returns" on Intrastate Traffic, nor for the Majority Opinion That the Commission's Order Must be Set Aside for Lack of Substantial Evidence.

The conclusion of the majority of the Court that the Commission's order is invalid clearly results from the majority's unqualified acceptance and the results obtained from the application of false-named and deceptive data submitted in evidence by the Utah commission in its Exhibit No. 64 (R. 548), headed "Intrastate Statistics", which attempts to compare what purports to be the operating ratios of four Utah railroads in handling Utah intrastate traffic, and "density" of Utah intrastate traffic with system-wide operating ratios and traffic densities of those four roads. We confidently believe that the Utah commission has misled and deceived the majority of the Court by using the commingled and false-named "intrastate statistics" to produce the erroneous results which led the majority to the conclusion that the order must be set aside.

The question involved in a proceeding under Section 13(3) and (4) of the Act is whether—

> "* * * any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State"

causes any undue prejudice against persons or localities in interstate commerce or any "unjust discrimination against interstate or foreign commerce." Hence, any attempt to test the lawfulness of the Utah intrastate rates by comparing operating ratios resulting from the handling of traffic in Utah or the density of the state traffic with "system statistics" must be limited to actual intrastate traffic moved "wholly within" Utah (Section 1(2)(a) of the Act) under intrastate rates "made or imposed by authority" of the Utah commission.

But, as pointed out at pages 86-87 of the brief filed by these railroads in this Court and at page 21 of the Government's brief, the fatal defect in the mis-named "intrastate statistics" submitted by the Utah commission in Exhibit No. 64 is that those statistics are not limited to intrastate traffic revenues or expenses but, as frankly stated by that commission's witness, include not only intrastate traffic but also *all interstate traffic* moving to and from Utah and all "bridge" traffic moving across Utah. Obviously, there is no valid or rational basis for a claim that the intrastate rates and traffic produced any part of interstate revenues, or for including interstate revenues in arriving at an operating ratio for handling intrastate traffic, or interstate net ton miles in arriving at the "density" of intrastate traffic. Indeed, the states' rules governing the preparation of annual reports to the state commissions say (R. 306)

> "1. Eac[h] State is *credited* with all revenues derived from its *intrastate* traffic," although the rules require an apportionment of interstate revenue to the states. (Italics added.)

This basic defect which obviously stripped those mis-named "intrastate statistics" of any relevancy or probative effect whatever, must, we confidently believe, have been overlooked or its vitiating effect not understood by the majority, but it is established beyond possible doubt in the following testimony of the Utah commission's witness at page 293 of the record:

"Q. Now to begin with, Mr. Crandall, the heading on Exhibit No. 64, on the left hand side, reads 'Intrastate Statistics'?

"A. Yes.

"Q. Now it is a fact is it not, that that includes both interstate and intrastate traffic in Utah?

"A. That is correct.

"Q. So that it isn't intrastate in the sense of movements?

"A. Meaning that it is interstate and intrastate movements within the State of Utah.

"Q. Now all bridge traffic, moving across the state of Utah, that has neither origin or destination in Utah, is included in those statistics, in the left half of Exhibit No. 64?

"A. That is correct."

To the Commission and others having knowledge of and familiarity with reporting methods and railroad statistics, the fact alone, admitted by the Utah commission's witness, that the mis-named "intrastate statistics" included and commingled revenues, etc., from both interstate and intrastate traffic was sufficient completely to strip them of any probative force whatever, and to require their rejection. Hence, the Commission mentioned,

but did not dwell at length on this false method employed by the Utah commission in arriving at low operating ratios and high traffic densities for Utah intrastate traffic but, as stated in the majority opinion, rejected the result obtained from application of these false figures, saying (R. 115)—

> "* * * [o]ne of the principal objections to the density figures above shown is that they were obtained by using only the miles of main track. The density results would be substantially reduced if branch-line mileage were included. The comparisons thus made are of little significance in our determination here. A more important consideration is the positive showing made upon this record that the average unit expense of servicing Utah intrastate traffic is at least as great as that of servicing interstate traffic to and from Utah."

Nor does the majority opinion take cognizance of the false results necessarily flowing from commingling and including both intrastate and all interstate traffic moving in Utah in an attempt to lower the operating ratios and to increase the density of actual Utah intrastate traffic. If it had done so, we feel certain that the majority would never have held the Commission's order invalid for lack of substantial evidence in the particulars mentioned in the majority opinion.

We will now endeavor to demonstrate the inescapably false and fantastic results produced by the figures and methods used by the Utah commission, and the consequent error of the majority in accepting and relying upon the Utah commission's figures and the results obtained from applying them. The annual reports of the railroads to the Utah commission, to which the majority

opinion refers, are required to and do state separately the amount of revenue earned from hauling intrastate traffic within Utah, and the amount of revenue they earn from hauling interstate traffic to, from and across Utah, apportioned as required by the Utah commission "on the basis of the mileage traversed (in Utah) by the individual passenger or the individual shipments" (R. 306). In compiling Exhibit No. 64, the witness for the Utah commission significantly failed to show separately the intrastate and the apportioned interstate revenues as they are separately shown in the reports, but merely added the revenues from actual Utah intrastate freight traffic, and the revenues from the apportioned interstate freight traffic, and showed the intermingled total as Utah "intrastate" revenues. Total operating expenses are shown in Exhibit 64 and in the annual reports, as required by the Utah commission, on the basis of train mileage in Utah (R. 306), with no separate showing of expense of handling intrastate and interstate traffic. From this intermingling of revenue and expense involved in handling Utah intrastate traffic with apportioned revenue and expense involved in handling interstate traffic to, from and across Utah, the witness calculated what he claimed to be an "operating ratio" of the Utah railroads in handling Utah intrastate freight traffic.

To make a specific demonstration of the falsity of the figures relied upon by the Utah commission and the majority of the Court, and the egregious error in giving them any probative effect at all: Exhibit No. 64 shows Union Pacific's Utah intrastate freight revenue as $51,243,557 for 1953, but the Union Pacific's annual report to the Utah commission for 1953 (see photocopy, page 700 of that report, page 9) shows that of this total intermingled intrastate and interstate revenue, only

U.P.R.R. Co

710. RAILWAY OPERATING REVENUES EARNED WITHIN THE STATE

Utah

(For roads making operating reports)

State the railway operating revenues of the respondent for the year (classified in accordance with the Uniform System of Accounts for Steam Railroads), and the comparison of such revenues with those of the preceding year (showing increases in black and decreases in red) for each of the several classes. The proportion of joint traffic receipts belonging to other carriers should not be included in column (b).

Line No.	Class of railway operating revenues (a)	Total amount of revenue for the year (b)	Comparison with total revenue of preceding year. (Increase in black, decrease in red) (c)	Revenues Earned Within the State: On intrastate traffic (d)	On interstate traffic (e)	Total (f)
		$	$	$	$	$
1	I. TRANSPORTATION—RAIL LINE					
2	(101) Freight			8 732 991	42 511 466	51 243 557
3	(102) Passenger			29 753	3 705 270	3 735 023
4	(103) Baggage			2 864	14 082	16 946
5	(104) Sleeping car				101	101
6	(105) Parlor and chair car					
7	(106) Mail			80 200	1 256 169	1 336 369
8	(107) Express				500 560	500 560
9	(108) Other passenger-train			115	10 884	10 999
10	(109) Milk			3 056	9 204	12 260
11	(110) Switching	Data for columns (b) and (c) not required			461 236	461 236
12	(113) Water transfers—Freight					
13	(114) Water transfers—Passenger					
14	(115) Water transfers—Vehicles and livestock					
15	(116) Water transfers—Other					
16	Total rail-line transportation revenue			8 848 079	48 468 972	57 317 051
17	III. INCIDENTAL					
18	(131) Dining and buffet				448 122	448 122
19	(132) Hotel and restaurant				206 183	206 183
20	(133) Station, train, and boat privileges				12 041	12 041
21	(134) Parcel room				597	597
22	(135) Storage—Freight				1 078	1 078
					1 737	1 737

5	(104) Sleeping car													101				101
6	(105) Parlor and chair car																	
7	(106) Mail										80	200	1	256	169	1	336	369
8	(107) Express													500	560		560	560
9	(108) Other passenger-train											115		10	884		10	999
10	(109) Milk										3	056		9	204		12	260
11	(110) Switching				Data for columns (*b*) and (*c*) not required									461	236		461	236
12	(113) Water transfers—Freight																	
13	(114) Water transfers—Passenger																	
14	(115) Water transfers—Vehicles and livestock																	
15	(116) Water transfers—Other																	
16	Total rail-line transportation revenue								8	848	079	48	468	972	57	317	051	
17	III. INCIDENTAL																	
18	(131) Dining and buffet													448	122		448	122
19	(132) Hotel and restaurant													206	183		206	183
20	(133) Station, train, and boat privileges													12	041		12	041
21	(134) Parcel room														597			597
22	(135) Storage—Freight													1	078		1	078
23	(136) Storage—Baggage													1	737		1	737
24	(137) Demurrage													53	990		53	990
25	(138) Communication													12	001		12	001
26	(139) Grain elevator																	
27	(141) Power														571			571
28	(142) Rents of buildings and other property													44	569		44	569
29	(143) Miscellaneous													80	700		80	700
30	Total incidental operating revenue													861	589		861	589
31	IV. JOINT FACILITY																	
32	(151) Joint facility—Cr													43	551		43	551
33	(152) Joint facility—Dr													13	251		13	251
34	Total joint facility operating revenue													30	300		30	300
35	Total railway operating revenues								8	848	079	49	360	861	58	208	940	

$8,732,091 was revenue derived from actual intrastate traffic moved "wholly within" Utah, and that $42,511,466 (or about 5 times the revenue from intrastate traffic) was revenue from interstate traffic moved on interstate rates to, from or across Utah during 1953. Thus, the Union Pacific's revenue from actual intrastate traffic was only 17.04% of the total revenue of $51,243,557, while the apportioned revenue from interstate traffic was 82.96% of the total intermingled revenue stated in Exhibit 64.

The total intermingled intrastate and interstate revenues shown as required by the Utah commission in Union Pacific's annual reports for the four-year period used in Exhibit 64, was $186,728,771, of which only $29,128,390, or 15%, was revenue from actual intrastate traffic, and $157,600,381, or 85%, was revenue from interstate traffic that moved to, from or across Utah. Thus, the Utah commission falsely inflates by more than *five times* the revenue produced by Utah intrastate rates during the four-year period.

The misnamed "intrastate" traffic density figures in Exhibit 64, are, likewise, falsely inflated by intermingling and adding to the actual intrastate net ton miles of traffic, the net ton miles of interstate traffic which produced 85% of the total revenue shown as required by the Utah commission as "earned within the State" by the Union Pacific. Since true revenue (as distinguished from arbitrarily apportioned or allocated, as the Utah commission requires) is directly related to net ton miles, it results that what purports to be the total Utah intrastate traffic density shown in Exhibit No. 64 for the Union Pacific in 1953 was composed of about 15%, or only 772,269 net ton miles, of intrastate traffic and 85%, or 4,376,192 net ton miles of interstate traffic.

The complete fallacy of testing or determining the question whether intrastate rates discriminate against interstate commerce by so-called operating ratios and traffic densities of intrastate traffic calculated and resulting from commingling and falsely treating revenues and traffic densities of all interstate traffic that moved to, from or across Utah as comprising a total of intrastate traffic handled within Utah is readily apparent:

Every state in the United States unquestionably has movements by rail of both interstate and intrastate traffic, but if each of the state commissions employed the method used here by the Utah commission of crediting its intrastate rates not only with actual intrastate traffic densities and revenues but also with the revenues and densities of interstate traffic movements that took place within the state, then the end result would necessarily be that the intrastate traffic of the nation and the intrastate rates under which it moves would be credited with producing *all* traffic densities and *all* revenues from all of the traffic — both intrastate and interstate — that moves throughout the country, and there would be no interstate revenues and densities against which to compare those of intrastate traffic. By this fantastic and fallacious method, the intrastate rates could never be found to cause any unjust discrimination against interstate commerce. Thus, the purpose of Section 13 to make the far smaller percentage of intrastate traffic pay its way would be completely subverted, leaving that traffic to move at the expense of the rates upon and revenues produced by interstate traffic.

In the first case decided by this Court after enactment of Section 13 of the Act, *Wisconsin R. R. Comm. v*

C., B. & Q. R. R. Co., 257 U. S. 563, this situation was thoroughly comprehended and disposed of by the following language at pages 585-586:

> "Intrastate rates and the income from them must play a most important part in maintaining an adequate national railway system. Twenty per cent. of the gross freight receipts of the railroads of the country are from intrastate traffic and fifty per cent. of the passenger receipts. The ratio of the gross intrastate revenue to the interstate revenue is a little less than one to three. If the rates, on which such receipts are based, are to be fixed at a substantially lower level than in interstate traffic, the share which the intrastate traffic will contribute will be proportionately less. If the railways are to earn a fixed net percentage of income, the lower the intrastate rates, the higher the interstate rates may have to be. The effective operation of the act will reasonably and justly require that intrastate traffic should pay a fair proportionate share of the cost of maintaining an adequate railway system. * * *"

The true and correct Utah actual intrastate revenue, the revenue from interstate traffic apportioned to Utah as required by and reported to the Utah commission, the Utah intrastate density (in proportion to intrastate revenue) and the "system" traffic density of the Union Pacific for the four years used in Exhibit No. 34 are:

REVENUE

	Actual Utah Intrastate	Apportioned Utah Interstate	Total—Intrastate and Interstate
1950	$ 6,809,608	$ 34,619,115	$ 41,428,783
%	16.44	83.56	100
1951	$ 6,939,322	$ 40,755,775	$ 47,695,097
%	14.55	85.45	100
1952	$ 6,647,369	$ 39,713,965	$ 46,361,334
%	14.34	85.66	100
1953	$ 8,732,091	$ 42,511,466	$ 51,243,557
%	17.04	82.96	100
Total 4 yrs.	$29,128,390	$157,600,381	$186,728,771
%	15.60	84.40	100

DENSITY (Net Ton Miles)

	Utah intrastate	Union Pacific "system"
1950	490,105	3,112,735
1951	532,222	3,526,004
1952	530,017	3,424,796
1953	772,269	3,474,790

Further demonstrating the fallacy in the Utah commission's compilation and use of its false-named "intrastate statistics," and the acceptance thereof in the majority opinion, the claimed Utah density (ton miles of traffic per mile of main road) would give Utah intrastate traffic credit for the entire density or *all* net ton miles per mile of road for both intrastate and interstate traffic moved in, to, from and across Utah in 1953. The Utah commission has claimed, and the majority of this Court has agreed, that the traffic density figures go far toward proving that the intrastate rates do not discriminate against interstate commerce because in the four years used in Exhibit 64 the combined total interstate and intrastate net ton miles moved in Utah was greater

than the Union Pacific system density or net ton miles in a ratio of about 4 to 3. Aside from the vitiating defect that the claimed Utah intrastate density includes all interstate net ton miles moved in Utah, the further fallacy is found in the fact, shown by figures in the table on page 13, that the claimed higher density of Utah intrastate traffic produced actual intrastate revenue in a ratio of less than 1 to 5, compared to the apportioned interstate traffic that moved in Utah.

It is plain, we submit, that the majority of the Court was misled by or did not fully comprehend the falsity of the mis-named intrastate density figures relied on by Utah or the fantastically false and incongruous results produced by application of them.

If the Court now refuses to rehear this case and correct the majority opinion by rejecting, as did the Interstate Commerce Commission, the Utah commission's false "statistics," and sustaining the validity of the Commission's order, then, of a certainty, in view of their continuing efforts to defeat the purposes of Section 13 of the Act, intransigeant State commissions will seize upon the methods here employed by the Utah commission, and their objective to prevent intrastate traffic from paying its way will have been accomplished.

II.

The Majority Opinion Departs From and is Contrary to the Decisions of This Court Sustaining Section 13 Orders of the Commission for 35 years, and Directly Conflicts With the Action of the Court in No. 861, NORTH WESTERN-HANNA FUEL CO. V. U. S., ET AL., (on the Same day the Majority Opinion was Announced in the Instant Case) Affirming, PER CURIAM, a Judgment of a Three-Judge District Court Sustaining a Section 13 Order of the Commission Based Upon Evidence Identical in Nature and Substantiality to the Evidence in the Instant Case.

The majority holds the Commission's order invalid because, as stated in the opinion, "[w]e do not believe that the evidence here met the exacting standards required by our prior cases." The only deficiencies in the evidence pointed out in the majority opinion are:

> 1. "* * * we discover no positive evidence to indicate that the relative cost of intrastate traffic was as great as that of interstate shipments. The absence of such evidence is important * * *"
>
> 2. "As to the finding that intrastate conditions were *not* more favorable than those incident to interstate transportation, the railroad evidence on this point was far from substantial. In essence, it merely showed that intrastate and interstate traffic was handled by the same crews and intermingled in the same movement. This evidence failed to establish that all material factors bearing on the reasonableness of rates were substantially the same. As we have previously noted, appellants offered convincing evidence not only of greater density on intrastate operations, permitting a wider spread of fixed costs, but also of lower operating ratios and higher returns as the percentage of intrastate traffic in-

creased. In the face of this proof the evidence as to general similarity of conditions falls short of the 'high standard of certainty' required."

Discussing these holdings in their order:

1. To the extent it relies upon the absence of "positive evidence to indicate that the relative cost of intrastate traffic was as great as that of interstate shipments," the majority opinion is directly opposed to decisions of this Court sustaining Section 13 orders of the Commission for 35 years without any evidence of such costs, and to the following decisions of this Court expressly holding that such cost evidence is not essential to the validity of a Section 13 order; *Wisconsin R. R. Comm. v. C., B. & Q. R. R. Co.*, 257 U. S. 563, 587-588; *Illinois Commerce Commission v. United States*, 292 U. S. 474, 483-484, citing *United States v. Louisiana*, 290 U. S. 70 and *Florida v. United States*, 292 U. S. 1; *King v. United States*, 344 U. S. 254, 273.

Indeed, no prior decision of this Court can be found holding or even implying that evidence showing the relative cost of handling intrastate and interstate traffic is necessary to support an order of the Commission under Section 13 of the Act. If now, for the first time, the majority intends to lay down the rule that the Commission can not make a valid state-wide revenue order under Section 13 in the absence of positive evidence of the relative cost of handling intrastate and interstate traffic, then all of such orders issued by the Commission in the past without evidence of such relative costs were invalid, and decisions of this Court sustaining them were wrong.

In its administration of Section 13 since 1920, the Commission has always held that cost evidence is not necessary to a valid order under that section, and has repeatedly rejected contentions of State commissions to the contrary. See *Alabama Intrastate Fares*, 1948, 273 I.C.C. 627, 635-637; *Increases in Alabama Freight Rates and Charges*, 274 I.C.C. 439, 463; *Utah Intrastate Freight Rates and Charges*, 287 I.C.C. 315, 321; and *Minnesota Intrastate Freight Rates and Charges*, 300 I.C.C. 201. (Judgment of three-judge district court sustaining that order was affirmed, *Per Curiam*, by this Court, No. 861, *North Western-Hanna Fuel Co. v. United States*, the same day the majority rendered its decision in the instant case.) The Commission's report in that case states, 300 I. C. C. 222-223:

> "* * * [i]n numerous more recent decisions, both by lower courts and by the Supreme Court, it has been held that to impose on this Commission the duty of separating property used in the two services when so much of it is used in both would be to assign it a well-nigh impossible task. *Wisconsin R. Comm. v. Chicago, B & Q. R. Co.*, 257 U. S. 563, 588. In *Florida v. United States*, 292 U. S. 1, 9, Chief Justice Hughes, who wrote the opinion in *Minnesota Rate Cases, supra*, said:
>
> > 'The requirement of essential findings as to revenues did not demand an impractical exactness. Losses through inadequate rates could be shown satisfactorily even though proof of the precise extent of such losses was not available. Reasonable determinations were required and these were made.'
>
> "In *Illinois Commerce Comm. v. United States*, 292 U. S. 474, at page 483, the Court said:

> 'Where the conditions under which interstate and intrastate traffic move are found to be substantially the same with respect to all factors bearing on the reasonableness of the rate, and the two classes are shown to be intimately bound together, there is no occasion to deal with the reasonableness of the intrastate rates more specifically, or to separate intrastate and interstate costs and revenues.'
>
> "In *State of Montana v. United States*, 106 F. Supp. 778, 781, the court rejected the contention made on behalf of the State that the evidence was insufficient to support the order of this Commission because of the failure to segregate and prove separately the costs and revenues of the intrastate traffic, and this finding was referred to with approval by the Supreme Court in *King v. United States*, 344 U. S. 254."

This Court has consistently held that long interpretation by the Commission in its administration of a provision of the Act will be given great weight, and will not be disturbed by the courts unless clearly wrong, *United States v. Mo. Pac. R. Co.*, 278 U. S. 269, 280.

In the *Wisconsin* case, *supra*, this Court held at page 588:

> "* * * [t]o impose on the Commission the duty of separating property used in the two services when so much of it is used in both, and to do this in a reasonably short time for practical use, as contemplated by the statute, would be to assign it a well-nigh impossible task. This, of itself, prevents our giving the words such a construction unless they clearly require it. They certainly do not."

If the majority opinion is intended now to reverse the time-worn position of the Commission and this Court

and burden the railroads and the Commission with the "well-nigh impossible task" of attempting to make such cost separations in future Section 13 proceedings then we suggest that it should not leave its intent in doubt but should be clear and explicit so that relief from such burdensome, unnecessary and impossible task might be sought at the hands of Congress.

2. In holding that the evidence here did not meet "the exacting standards required by our prior cases," the majority opinion says that when Federal power is exerted to remove an undue burden caused by low interstate rates against interstate commerce, "proof of such must meet 'a high standard of certainty,'" citing *Illinois Central R. Co. v. Public Utilities Commission*, 245 U. S. 493, 510. But that case did not concern the adequacy, substantiality or certainty of "proof" required to support a Commission order superseding state authority over intrastate rates. Indeed, the decision does not, as there was not a remote reason, even to mention evidence or "proof." The sole question in the case arose because the parties differed widely about "the scope of the order," the carriers asserting that the order was state-wide and required that every intrastate passenger rate in Illinois be increased, while the State authorities claimed the order was not state-wide, and that "the extent to which it is intended to affect the state-made rates is so indefinitely and vaguely stated as to make it inoperative and of no effect as to them" (page 507). The Court said that as the intent of an act of Congress to supersede State power must be "clearly manifested," so, "an order of a subordinate agency, such as the Commission, should not be given precedence over a state rate statute, otherwise valid, unless, and

except so far as, it conforms to a high standard of certainty," and concluded that "the uncertainty in this order is such as to render it inoperative and of no effect as to the intrastate rates * * *" (page 510).

Thus, the majority opinion here clearly mis-cites and misapplies the *Illinois Central* decision* and we respectfully suggest that the majority's oversight in failing to notice that it was an *order* superseding state rates and not the "proof" to support such order, which that decision held, must meet a "high standard of certainty," might have caused it to depart from the Court's long-standing rules governing evidential support for the Commission's Section 13 orders, and to lay down for the first time the rigid requirement that "proof" to support those orders "must" meet a "high standard of certainty."

Moreover, the cited *Illinois Central* case was decided two years before the enactment of Sections 13(3) and (4) and 15a of the Act placing upon the Interstate Commerce Commission for the first time the duty, in the exercise of its rate making powers, to provide revenues sufficient to enable the carriers to maintain an adequate railway transportation system and, to that end, to see to it that intrastate traffic contributes its fair share of such needed revenue and that this purpose of Congress shall not be defeated by state railway commissions.

This Court in many decisions has made it plain that the Commission, being an administrative tribunal

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* The decision was correctly cited in *North Carolina v. United States*, 325 U. S. 507, not as laying down a rule governing the quality of "proof" but as authority for the statement at page 511, that "orders giving precedence to federal rates must meet 'a high standard of certainty'."

and not a court, "is not hampered by mechanical rules governing the weight or effect of evidence," *Western Chem. Co. v. United States*, 271 U. S. 268, 271, and, specifically interpreting the Commission's power over intrastate rates under Section 13 and its duty under Section 15a to provide revenues needed to maintain an adequate national transportation system, this Court, far from laying down "exacting standards" for evidence or a "high standard of certainty" in the "proof" that intrastate rates unduly burden interstate commerce, has repeatedly and consistently held that those sections of the Act shall not be interpreted as imposing requirements regarding proof and findings so onerous as to prevent effective administration and enforcement of them. *Wisconsin R. R. Comm. v. C. B. & Q. R. R.*, 257 U. S. 563, 588; *United States v. Louisiana*, 290 U. S. 70, 75-76, 78-79; *Florida v. United States*, 292 U. S. 1, 9; *Illinois Commerce Commission v. United States*, 292 U. S. 474, 483; *King v. United States*, 344 U. S. 254, 275.

The evidence in this case follows the same pattern, covers the elements and factors, and, indeed, is practically identical to the evidence supporting all Section 13 orders sustained by this Court for 35 years. We find no previous case in which this Court has set aside a Section 13 order on the ground that the evidence was not "substantial." Compare *Mississippi Public Service Com'n v. United States*, 124 F. Supp. 809, affirmed on motion, without opinion, 349 U. S. 908.

In no decision dealing with Section 13 has this Court held, as the majority now holds, that "proof" that intrastate rates cast an undue burden on interstate commerce "must meet 'a high standard of certainty,'" or

"exacting standards." Not one of the decisions holds or implies that evidence to support a Section 13 order must show the relative cost of handling intrastate and interstate traffic; indeed, all of the decisions touching on the subject of costs hold that such showing is not required. Not one of the decisions of this Court sustaining orders under Section 13 of the Act holds that evidence comparing intrastate with "system" operating ratios and traffic densities is necessary to support a Section 13 order, or that a mere showing of a lower intrastate operating ratio or a higher intrastate traffic density is decisive, and is enough to outweigh voluminous evidence of the nature disclosed by the Commission's report in the instant case, to say nothing of the weight or probative effect of such operating ratios or traffic densities when those for the state take credit not only for intrastate traffic but all interstate traffic that moves to, from or across the state.

The majority opinion rejects as being "far from substantial" undisputed evidence admitted by appellants as fully supporting the following statement of fact by the Commission (R. 100):

> "* * * intrastate traffic handled within Utah and interstate traffic to or through points in that State are handled in the same trains by the same crews and other employees, and through the same yards and other facilities. No distinction is made between intrastate and interstate traffic in the loading, unloading, and line-haul movement."

This is the first time any decision of this Court has questioned the substantiality of such facts to prove that intrastate and interstate traffic are handled under substantially similar conditions, and the majority's hold-

ing is directly in the teeth of numerous decisions explicitly accepting such facts as substantial and sufficient evidence to prove that conditions under which intrastate traffic is handled are not more favorable than those under which interstate traffic is handled. Among the unbroken line of decisions by this Court are:

Wisconsin R. R. Comm. v. C. B. & Q. R. R. Co., 257 U. S. 563, 588 (this was the first decision by this Court sustaining an order of the Commission under Section 13);

New York v. United States, 257 U. S. 591, 600 (citing the *Wisconsin* case);

United States v. Louisiana, 290 U. S. 70, 79;

Florida v. United States, 292 U. S. 1, quoting the Commission's finding at page 11 and holding that "there was no lack of substantial evidence to support the Commission's finding" at page 13;

Illinois Commerce Comm. v. United States, 292 U. S. 474, 483, 485;

King v. United States, 344 U. S. 254, 271-272.

The majority's rejection, as "far from substantial," the evidence in the instant case showing the intermingled and identical handling of Utah intrastate traffic and interstate traffic is all the more shocking and incomprehensible in view of the fact that on the same day (May 19, 1958) the majority opinion was announced, the Court affirmed *per curiam* the judgment of the three-judge district court for Minnesota in No. 861, *North Western-Hanna Fuel Co. v. U. S.*, which sustained the Commission's order under Section 13 in *Minnesota Intrastate Freight Rates and Charges*, 300 I.C.C. 201 (involving the

same Ex Parte 175 increases that are involved in Utah in the instant case), in which the Commission's findings were upon evidence identical to that rejected by the majority in the instant case. At page 205 the report states:

> "Interstate and intrastate traffic are commingled, are transported in the same trains over the same tracks, and are handled through the same stations by the same station personnel. From an operating standpoint, therefore, there is no difference between these classes of traffic. * * *"

And at page 207:

> "* * * [t]he evidence is convincing that the unit cost of transporting intrastate traffic in Minnesota is not less than, and in some instances is greater than, the unit cost of transporting interstate traffic."

The evidence so relied upon by the Commission was held by the district court as sufficiently substantial to support the finding that transportation conditions incident to rail intrastate transportation in Minnesota were not more favorable than rail interstate transportation (see opinion printed as Appendix A to jurisdictional statement, page 42, in No. 861, October Term, 1957, in this Court.)

This Court's affirmance of the district court's judgment in that case, holding that evidence proving the intermingled and identical handling of interstate and intrastate traffic was substantial and the majority's opinion on the same day rejecting identical evidence as being "far from substantial" naturally leaves unanswered the questions: What is the law in this Court with respect to the substantiality of such evidence? Is the identical evidence sufficiently substantial in Minnesota but "far

from substantial" in Utah? What will be the status of the same type of evidence in other Section 13 cases which are on their way to this Court?

The majority opinion states that "this evidence failed to establish that all material factors bearing on the reasonableness of rates were substantially the same." Presumably, this was adopted from appellants' brief in this Court, citing, at page 14, *Illinois Commerce Commission v. United States*, 292 U. S. 474. But this Court's decision in that case (pages 483-485) clearly holds that evidence showing that movements of interstate and intrastate traffic are "intimately bound together" is sufficient to prove that the conditions under which the two classes of traffic are handled are "substantially the same with respect to all factors bearing on the reasonableness of the rate" for, at page 485, the Court held:

> "* * * [t]he effect of maintaining a lower rate, intrastate, than the reasonable interstate rate is necessarily discriminatory wherever the two classes of traffic, inextricably intermingled, are carried on, as in the District, under substantially the same conditions * * *".

Moreover, while the "reasonableness" of the switching rates for the service performed was at issue before the Commission in that case, the proceeding was not, as here, a general revenue proceeding but was merely for the purpose of removing discrimination caused by intrastate rates against interstate commerce consisting of traffic switched within the Chicago switching district. The instant case is part of a general revenue proceeding for the purpose of providing sufficient revenues to enable the railroads of the country to maintain an adequate transportation system. This Court has held that in a

proceeding under Section 13 "the reasonableness *per se* of intrastate rates" is not an issue but that "the question is that of the relation of rates to income", *Florida v. United States*, 282 U. S. 194, 214. This Court has never held that in a Section 13 case the Commission must have before it evidence covering all factors bearing on the "reasonableness" of intrastate rates, and no doubt for the good reason stated in the *Florida* case that the "reasonableness *per se*" of intrastate rates lay with the state authorities and not with the Commission.

In view of the fact pointed out at pages 74-75 of the railroads' brief filed with this Court in the instant case that there are probably several hundred "factors" having a bearing upon reasonableness *per se* of rates in particular cases, we can not believe that the reference by the majority opinion in this case to "all material factors bearing on the reasonableness of rates" was intended to reverse all prior holdings by this Court and establish an entire new rule of evidence for proceedings before the Commission under Section 13 of the Act, but the doubt cast upon the situation by the majority's opinion leaves uncertainty which should be cleared away by explicit statement by the Court upon rehearing.

We respectfully observe that, although the majority opinion seems to hold that the order is invalid because the evidence upon which the Commission relied lacks substantiality, it is plain that the majority did not stop there. Instead, it clearly went on to disagree with the Commission concerning the probability of the evidence which the Commission rejected and to make its own findings from that evidence. Thus, the majority not only rejected the Commission's own appraisal and evaluation of the evi-

dence but usurped that exclusive administrative function of the Commission by proceeding to weigh and evaluate the evidence and make its own findings therefrom and nullify the order upon the findings it so made. In doing so the majority departed from and violated this Court's rule to which it has heretofore consistently adhered for half a century, that "[t]o consider the weight of the evidence before the Commission * * * is beyond our province." *Virginian Ry. v. United States*, 272 U. S. 658, 663. Indeed, no principle or rule laid down by this Court in connection with judicial review of administrative orders has been reiterated more often or adhered to more consistently than its rule that the weight of the evidence and the conclusions to be drawn from it is for the Commission and not for the courts. See *New York v. United States*, 331 U. S. 284, 326, 328, 331, 349; *Warehouse Co. v. United States*, 283 U. S. 501, 508. And, "in any special case of conflicting evidence a probative force must be attributed to the findings of the Commission," because of its "knowledge of conditions, of environment and of transportation relations," *Illinois Cent. &c. R. R. v. Inter. Com. Comm.*, 206 U. S. 441, 454.

The wisdom of that salutary rule and the unwisdom and danger of departing from it are demonstrated by the fact that, while this Court has always disclaimed any administrative expertise or technical knowledge in specialized fields, nevertheless the majority here made its own findings and nullified the Commission's order upon the very evidence which the Commission rejected in the exercise of its own technical knowledge of and long experience in prescribing accounting rules and statistical formulae for railroads, and in appraising and evaluating the correctness, soundness and probative effect of statistical data.

Surely, the majority will want to correct the impression, inescapable from its opinion, that the Court at this late day reverses, or would be construed as reversing its time-worn rule that the courts may not usurp the Commission's administrative function and prerogative by weighing, evaluating and making its own findings from the evidence.

III.

In Noting an Absence of any Findings by the Commission Concerning Revenues Derived From or the Conditions Incident to Intrastate Passenger Operations and in Holding That "the Findings Must Reflect Consideration of These Factors in Arriving at a General Intrastate Freight Level", the Majority Decision is Directly Opposed to the Action of the Court on the Same day Affirming PER CURIAM in No. 861, NORTH WESTERN-HANNA FUEL CO. V. UNITED STATES, the Judgment of a Three-Judge Court Sustaining a Section 13 Order of the Commission Which Contained no Findings or any Reference to Intrastate Passenger Operations, and in This Respect the Majority Decision is Directly Contrary to Every Decision of This Court Sustaining a Section 13 Order of the Commission, Except Possibly the MILWAUKEE COMMUTER Case.

Despite the fact that there was no contention before the Commission that Utah intrastate passenger fares burdened or discriminated against interstate commerce, the majority holds that "the findings must reflect consideration of these factors in arriving at a general freight rate level."

No decision of this Court under Section 13 of the Act prior to the recent decision in *Chicago, M., St. P. and P. R. Co. v. Illinois*, 355 U. S. 300, can be found holding or

even suggesting that the Commission can not make a lawful order under Section 13 with respect to intrastate passenger rates without considering intrastate freight operations or vice versa. Indeed, no prior decision of this Court can be found in which the Commission's Section 13 order concerned both passenger and freight intrastate rates. The first two cases decided by this Court under Section 13 concerned intrastate passenger fares and did not concern intrastate freight rates or the "totality" of intrastate operations. The Court sustained the orders without making even a suggestion concerning the necessity of findings concerning freight revenues or freight operations. *Wisconsin R. R. Comm. v. C., B. & Q. R. R. Co.*, 257 U. S. 563; *New York v. United States*, 257 U. S. 591. The numerous cases cited and analyzed in the dissenting opinion in this case show indisputably that Section 13 orders of the Commission, consistently sustained by this Court, involved either intrastate freight rates or intrastate passenger fares, but not both in the same case, and in many of the cases the orders concerning only intrastate freight rates were not statewide but dealt only with rates on individual commodities. For example, in *Florida v. United States*, 282 U. S. 194 and 292 U. S. 1, the order dealt only with intrastate freight rates on logs hauled by one railroad; in *Alabama v. United States*, 283 U. S. 776, only the intrastate rates on fertilizer and fertilizer materials were involved; the Section 13 order sustained in *Ohio v. United States*, 292 U. S. 498, concerned only the intrastate rates on bituminous coal from limited mining districts in eastern and southern Ohio to destinations in the northeastern portion of the state.

Thus, this Court's decision in the *Milwaukee Commuter* case was directly in the teeth of all prior decisions

by this Court involving Section 13 orders, although the opinion in that case made no commitment as to whether it should be taken as a reversal of evidential and procedural requirements implicitly sustained in all other decisions of the Court involving Section 13 orders concerning either intrastate freight or passenger operations, but not both in the same order. And, while the decision in that case merely held that commuter fares could not be dealt with under Section 13 without considering the "totality" of the Milwaukee's Illinois intrasfate passenger and freight operations, even though no statewide order or general revenue needs were involved, the majority decision in the instant case now turns the *Milwaukee Commuter* decision around and uses it as authority to require findings covering passenger operations in a general revenue case involving only freight rates, and to reverse all prior decisions of this Court so as to make essential in each Section 13 freight rate case the submission of evidence, and consideration and findings by the Commission concerning intrastate *passenger* operations, as well as intrastate freight operations. Yet, on the same day the majority in the instant case announced its decision, the full Court in No. 861, *North Western-Hanna Fuel Co. v. U. S., et al.*, affirmed the judgment of the three-judge district court of Minnesota which, in turn, sustained the validity of a Section 13 order involving only intrastate freight rates and charges, and not a word of evidence or any finding concerning passenger operations. *Minnesota Intrastate Freight Rates and Charges*, 300 I. C. C. 201.

The confusing and inconsistent result of all this is that the railroads and the Commission are left not merely in doubt and uncertainty but without any way of knowing

what the law in this Court is on this point. We can not know whether the law in this Court is that which was implicit in all decisions, prior to the *Milwaukee Commuter* case, sustaining Section 13 orders concerning exclusively either with intrastate freight rates or intrastate passenger fares, but not both; or, whether the law is that announced in the *Milwaukee Commuter* case, that no intrastate passenger fare can be dealt with under Section 13 without dealing with the "totality" of all freight and passenger operations within the state; or, whether the law is that laid down in the majority decision in the instant case, that a statewide order concerning freight rates alone can not be made by the Commission unless its findings reflect consideration of revenues and conditions incident to both freight and passenger operations within the same state; or, whether the law that is implicit in the Court's *per curiam* action, on the same day the majority decision in this case was announced, affirming the district court's judgment in the *North Western-Hanna Fuel* case, which sustained the validity of a Section 13 order concerning only intrastate freight rates and charges in Minnesota without any consideration by the Commission of intrastate passenger operations. The railroads and the Commission will be "hampered", indeed, in the presentation and decision of future Section 13 cases if the Court refuses to rehear this case and, once and for all, make the law clear on this point.

CONCLUSION

The majority opinion accepts and relies upon the Utah commission's false formula for testing the validity of its intrastate rates under Section 13 of the Act by crediting them with the production of the revenues not only from Utah intrastate traffic but also an apportion-

ment of revenues admittedly produced by all interstate traffic moved to, from and across Utah. As the apportioned revenues from interstate traffic generally exceed by several times (five times in Utah) the actual revenue produced by intrastate rates, by applying such a false formula every state in the United States could always make a showing that its intrastate rates contribute several times the actual revenues derived from them, with the result intrastate rates could never be found to unduly burden or discriminate against interstate commerce. Thus, unless the majority decision is corrected, intransigeant state commissions will have finally found a method of accomplishing their persistent purpose to defeat the intent of Section 13 by preventing intrastate traffic from contributing reasonably to the revenues necessary to provide a national railroad transportation system. For this and other reasons discussed above, these petitioners earnestly pray that the Court rehear, reconsider and correct the majority opinion in this case.

Respectfully submitted,

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June, 1958

CERTIFICATE OF COUNSEL

I hereby certify that this petition is presented in good faith and not for delay.

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PROOF OF SERVICE

I, ELMER B. COLLINS, counsel of record for railroad petitioners herein, and a member of the bar of the Supreme Court of the United States, hereby certify that on the 9th day of June, 1958, I served, on behalf of all railroad petitioners herein, copies of the foregoing petition for rehearing on the adverse parties herein, as follows:

1. On the Public Service Commission of Utah by mailing a copy in a duly addressed envelope with air mail postage prepaid to:

E. R. Callister, Esq.
Attorney General of Utah
Salt Lake City, Utah

Keith Sohm, Esq.
Commerce Attorney for Utah Public Service Commission
State Capitol
Salt Lake City, Utah

2. On the Utah Citizens Rate Association by mailing a copy in a duly addressed envelope with air mail postage prepaid to:

Calvin L. Rampton, Esq.
721 Continental Bank Building
Salt Lake City, Utah

3. Also on the United States of America by mailing a copy in a duly addressed envelope with air mail postage prepaid to:

Honorable J. Lee Rankin
Solicitor General of the United States
Department of Justice
Washington 25, D. C.

Victor R. Hansen, Esq.
Assistant Attorney General
Department of Justice
Washington 25, D. C.

A. Pratt Kesler, Esq.
United States Attorney for the District of Utah
Room 200, Federal Building
Salt Lake City, Utah

4. Also on the Interstate Commerce Commission by mailing a copy in a duly addressed envelope with air mail postage prepaid to:

Robert W. Ginnane, Esq.
General Counsel
Interstate Commerce Commission
Washington 25, D. C.

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